

CHILDREN OF IMPRISONED PARENTS

Children of imprisoned parents

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Editors:

Peter Scharff-Smith and Lucy Gampell

The Danish Institute for Human Rights,
European Network for Children of Imprisoned Parents,
University of Ulster and Bambinisenzasbarre
2011

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Chapter 1: Introduction

By Elizabeth Ayre, Lucy Gampell and Peter Scharff Smith

The officer said that we had to leave the room so he could check it for drugs. When we were on the way out of the room, he opened my drawers and began throwing my underwear, among other things, all over the place. It was so insulting I felt as if I was a criminal.

Carina (Denmark), 16 at the time of arrest of her father

I cannot blame her for wanting to protect me, but I could just have used the truth for a number of things. Then I wouldn't have to tell lies at school and perhaps it might have been easier to talk about it at home ... When she tells me something, I automatically think: Is that really true? I will always have a feeling that she let me down by not answering the questions that were so deep inside me. It was really about my father and not some distant uncle or other.

Diana (Denmark) about her mother not telling the truth of her father's imprisonment

I remember going out to see a girl one time and she had seven children, and the police came out and arrested her husband at half-five, teatime with all her kids in the house. All the police cars in the driveway – came out, took him and away they went and she hadn't a clue where he was going, where he was away to. There was hardly any communication. The children were stood out the front in their sock soles while they [the police] searched the house, no support whatsoever. She hadn't a clue where he was ... and that really affected that whole family.

An NGO-worker (Northern Ireland) about the insufficient information at the time of arrest

You hear prisoners saying to their children, 'I'm at work', the children being at their granny's house or their aunt's house, also the cousin's – they hear the adults talking, you know, so I was aware that, you know that they may pick up on wee things. So what I done was, I told them I was in prison, although I told them I was in for driving offences, I says, "Daddy doesn't have his licence". Obviously when they get older and I'll maybe have to sit down and tell them.

A prisoner in Magilligan (Northern Ireland) about how to inform his child about imprisonment

Every visitor feels they're being treated as drug smugglers.

A prisoner focus group in Maghaberry (Northern Ireland) about search procedures for visitors

When the mother refused to bring our child to visit me in prison, the prison governor agreed to three one-day releases so I can see my five-year-old daughter at home. The first time I was only able to see her because my Mum paid my former partner to be there. When I went out the second time, she took our daughter out of the city so I wasn't able to see her at all. After that, I just gave up and said to the governor that I am giving up the day release voluntarily.

AS Radom (Poland) about prison visits

1. Introduction

According to historians, prisons have existed as separate institutions in Europe for more than 400 years, and imprisonment has been a key sanction in the range of punishments of modern European states since the 19th century. Experts, policy makers and many others have discussed the effects of imprisonment for decades and even centuries, addressing issues such as the purpose of imprisonment as a punishment and its effects on recidivism, rehabilitation and prevention. These discussions have typically focused on the impact of imprisonment upon the individual prisoner and to a certain degree on the possible deterrent effect that incarcerating criminals can have upon the rest of society. However, it is of course inevitable that the use of imprisonment will also affect prisoners' families and perhaps, most especially, their children.

Yet, children of imprisoned parents have, up until the later decades of the 20th century, attracted scarce attention, either politically or as a topic for research. As recently as 2005, two prominent criminology editors of a volume on "The effects of imprisonment" concluded that the impact of imprisonment on the prisoner's family was still one of the less studied fields within criminology, despite the obvious importance of this area.¹ As a consequence, children of imprisoned parents as a specific group have been labelled the 'forgotten victims' of our system of punishment.² This seems hard to understand given the extent of the problems many of these children face, the potentially long-term damage to their emotional and psychological development and the sheer scale of the problem: on any given day there are millions of children who experience parental imprisonment all over the world and an estimated 800,000 in the European Union alone. This figure is not only likely to be a conservative estimate but also only relates to children with a parent in prison. There are of course many, many more children who are affected by imprisonment of their siblings, grandparents, uncles and aunts and other family members with whom they have a close relationship. The effects of such imprisonment on those children will often be similar to those experienced by children whose parent goes to prison, and many of the rights and issues identified within this report still apply. The recommendations that follow should therefore be considered with this in mind.

2. Why punish the children?

When a parent is imprisoned it can affect the children in numerous and important ways. For a minority of children it is in their best interest when contact with a parent ceases (for example, if the imprisoned parent has been abusive within the home); for the vast majority of these children affected, this is not the case. Yet the issue for consideration is how best to support a child with an imprisoned parent, regardless of the actions or behaviour of their parent. Children need to be able to maintain and develop meaningful relationships with their imprisoned parent and this can often be extremely difficult given the typical rules and regulations regarding prison visits, visiting times, limited telephone contact, etc. Maintaining contact with their children and retaining a level of parental responsibility is also important to the parent in prison, enabling them to be actively engaged and involved in their child's development and thereby contributing to their wellbeing, self-esteem and rehabilitation.

¹ See, among others, Liebling, A. and Maruna, S. (2005) *The Effects of Imprisonment* Cullompton: Willan

² Murray (2006) p. 208

It is very clear from the available research that prisoners' children comprise a vulnerable group. For example, prisoners' children are identified as an 'at risk group' in relation to developing criminal and anti-social behaviour later in life; to failing to reach their potential at school; and to developing mental and emotional problems³. Qualitative research has also shown how parental imprisonment can affect children individually and in many different ways. Many are not told the truth about what has happened to their parent, for example, resulting in some children fearing that the parent who has 'disappeared' has died. Some lose focus in school and think of their imprisoned parent all the time. Many children experience stigmatisation following parental imprisonment: some are bullied at school and their families become ostracised by their local community, even resulting in them having to move area. For children with mothers in prison the effects are generally even more acute. Many were living in single-parent households and ended up having to move home to live with other relatives or being taken in to the care of social services. Much of this research will be reviewed and described later in this report. Taken together with the new data and analysis supplied with this study, one is left with one overarching question, which is in need of an answer:

How can we transform our system of justice so that we deal appropriately and effectively with those responsible for committing crimes but at the same time remove or ameliorate the negative effects experienced by their innocent children?

3. Children of imprisoned parents and their human rights

The focus of this study and a key perspective on this issue is the rights of the child and more specifically the rights of children of imprisoned parents. Exactly what rights do these children have and how should they be interpreted in the context of parental imprisonment? This is indeed a question in need of examination since the rights of children are in principle far-reaching and enjoy considerable international support, yet they have only in very general and limited ways been discussed and applied with a view to children of imprisoned parents. This study is based on the assertion that many of the problems faced by children of imprisoned parents – both, children separated from an imprisoned parent and young infants living with imprisoned mothers – can and should be approached through addressing their rights. But this demands work in terms of figuring out what their rights actually mean in the context of imprisonment and in terms of highlighting and discussing this with international, regional, and national law and policy makers.

All member states of the European Union and the Council of Europe are signatories to the UN Convention of the Rights of the Child (CRC) and are therefore required to give practical effect to the rights included in the Convention. Of particular relevance to the situation of children whose parents are in prison are:

- the right to be free from discrimination;⁴
- protection of the best interest of the child;⁵
- the right to have direct and frequent contact with parents from whom the child is separated;⁶

³ Children, Schools and Families & Department of Ministry of Justice (2007) *Children of Offenders Review* London: Ministry of Justice

⁴ CRC Article 2

⁵ CRC Article 3

⁶ CRC Article 9

- the right of the child to express his or her views and to be heard in matters affecting their situation;⁷
- the child's right to protection of their family life and their privacy;⁸
- the right of the child to protection from any physical or psychological harm or violence.⁹

To take one of these, the requirement in Article 3 of the CRC is fundamental and potentially far reaching: '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'.¹⁰ Children's rights are also protected by the European Convention on Human Rights and Fundamental Freedoms (ECHR), in particular by the provisions of Article 8 guaranteeing enjoyment of the right to family life without unjustified and disproportionate interference. The right of the imprisoned parent to family life is equally protected by this provision.

This potentially demands a great deal of the relevant public authorities when considering its relevance and application to children of prisoners, especially where the accused person before the courts is a mother or primary carer. What, for example, is done when children of imprisoned parents display serious problems and miss the contact with the imprisoned parent or parents? Are the relevant considerations taken into account in relation to, for example, considering alternatives to custody; choosing appropriate prisons where visits can be easily facilitated; permitting more child-friendly visits and visiting times; granting temporary release for imprisoned parents, etc? Another pivotal human right is the child's right to frequent and regular contact with his or her parents when in the child's best interest (Art 9.3). In addition, children have a right not to be discriminated against because of the activities of their parents. Yet, children of prisoners often feel ashamed, unsupported and stigmatised because their parent is in prison. They may experience bullying and harassment from their peers or the whole community in which they live – especially if the crime is of a serious nature and has been reported in the media; they may experience difficulties in school or have to move area; and they may find themselves judged by the deeds of their parents.

But to what degree are these rights merely abstract principles and what do – or should – they in fact entail in order to ensure the just treatment of children of imprisoned parents? This and many other issues will be discussed in the course of this report – partly in a specific background chapter on the rights of these children but also in connection with the various country studies and recommendations.

4. A European study on children of imprisoned parents – methodology and participants

The present study is based on the model of a study on children of imprisoned parents conducted in Denmark by the Danish Institute for Human Rights (DIHR). It has attempted to combine academic research with knowledge and information drawn from practical national work by statutory bodies and NGOs with children of prisoners and

⁷ CRC Article 12

⁸ CRC Article 16

⁹ CRC Article 19

¹⁰ CRC Article 3.1

from dialogue with all relevant professionals working in the field. This was to ensure that the recommendations are derived from both quantitative and qualitative research-based evidence, as well as from practical experience gathered from people related to, or working with and around, children of imprisoned parents – that is, prison staff in prison visiting areas, police officers doing arrests, social workers involved with prisoners' families, education workers in prison, psychologists, prisoners' relatives and children, etc.¹¹

At the start of the project, three primary partners were identified: the DIHR, the University of Ulster and the European NGO, EUROCHIPS¹². The study has involved four newly commissioned national studies on the treatment of children of imprisoned parents which have been conducted in Northern Ireland, Denmark, Italy and Poland, and consists also of separate analysis of the relevant human rights instruments and a review of the previously existing research on children of imprisoned parents. Through the partnership with EUROCHIPS, knowledge from many other European countries has also been incorporated into this study. Initially just two research studies were planned - in Denmark and Northern Ireland - but it was then agreed to include two more country studies to cover four jurisdictions within the EU. Western and Northern Europe were already covered and, following consultation between the primary partners, partner organisations were identified to join the project and carry out research in Italy (Bambinisenzabarre in Milan) and Poland (Second Chance Foundation in Torun) so as to cover Southern and Eastern Europe. As the available funds were limited and the organisations selected were small not-for-profit service providers without academic support, the two additional studies were intended to be smaller in scale. In each country, prison staff, prison/justice directorates, police academies, police officers, social services, relevant NGOs and others have been directly involved to varying degrees depending on the depth of the studies and existing contacts.

The studies concerning Northern Ireland and Denmark have been conducted by researchers (PhD level) and were national in coverage. The Italian and Polish studies had less funding allocated and therefore were more limited in their focus, with a greater emphasis placed on collecting relevant data and less on analysing these. Due to the high regard with which Bambinisenzabarre is held by the Italian Justice Ministry, however, the national prisons department endorsed the research questionnaires and sent them out to every prison in Italy, resulting in a far wider evidence base than had been anticipated. Due to organisational difficulties with Second Chance Foundation, the Polish study had to be reorganised partway through the project and was conducted on a regional basis by EUROCHIPS consultants working with Polish NGOs.

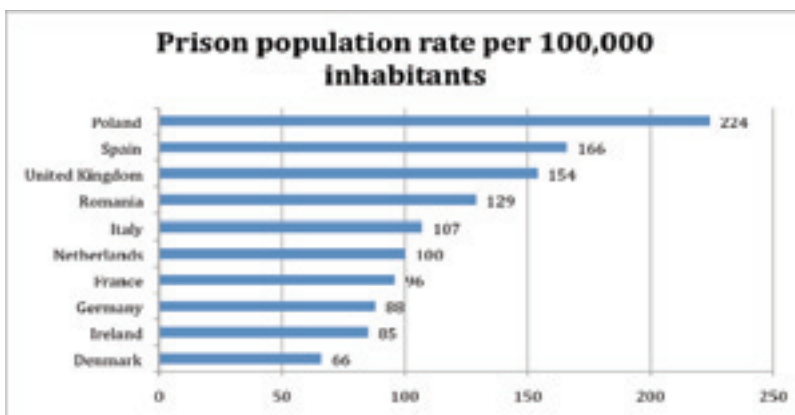
In all countries, research, dialogue, fieldwork and knowledge drawn from the expertise of those conducting the studies has been combined in order to achieve an optimal basis for making not only theoretical but also practical recommendations based on examples of good practice, and with a strong foundation in children's rights.

5. The number of children with imprisoned parents

¹¹ The Danish study was published in 2010, in Danish, and is currently undergoing translation. It includes a detailed analysis of the rights of children of imprisoned parents

¹² EUROCHIPS is a European-wide network of organisations working with and on behalf of children with an imprisoned parent; it seeks to raise awareness and achieve new ways of thinking, acting and interacting on issues concerning prisoners' children

Prison populations have risen rapidly in Europe during the last two decades. In seventeen European Union member states (EU-27) the number of offenders per 100,000 inhabitants currently exceeds 100; in five EU countries, the number exceeds 200 per 100,000.¹³ The prison population in the UK, long the leader in Western Europe with an imprisonment rate of 154 per 100,000 of the population – and now second only to Spain, with 166 – has doubled since 1993.¹⁴ This is in comparison to rates in France and Germany, respectively 96 and 88 per 100,000 inhabitants for the same period. Yet the prison population in France rose 9.1 per cent in one year, from 2006 to 2007; in Italy, the increase that year was 20.4 per cent. The consequence of this rise in prison populations is a significant increase in the number of children experiencing parental imprisonment. In 2007, there were 615,000 prisoners in the European Union (UE-27), including 590,000 male and 25,000 female prisoners (the average rate of female imprisonment ranges from 4.5 to 5 per cent in most EU countries, with such exceptions as Spain (8 per cent) and the Netherlands (with over 7 per cent)).



Source: COE Annual Penal Statistics — SPACE 1 — 2007 (random sample of EU countries)

One of the major challenges for those concerned with children of prisoners is knowing just how many children are involved. The Parliamentary Assembly of the Council of Europe calls on states to record the number, ages and location of a prisoner's offspring when he or she arrives at the prison.¹⁵ Yet few statistical records are kept on the parental status of prisoners. NGOs across Europe have long highlighted the need to develop systems for collecting and recording information on parental status and, in turn, to systematise this information; Sweden and Latvia being the rare exceptions of countries which routinely record and systematise information on prisoners' children. In 2004, following extensive lobbying, the UK government announced plans to record information on prisoners' children, with data being recorded on the newly introduced National Offender Management Information System, but the plan has been beset by delays and budget difficulties, and this information will not now be mandatory once the system is implemented. Generally speaking, authorities can enquire if a prisoner has children, but prisoners cannot be obliged to respond since that would constitute a violation of their human rights and, even if they do, nothing is systematically done with the information.

¹³ Source: EUROCHIPS, based on *Council of Europe Annual Penal Statistics SPACE 1: Survey 2007*, Council of Europe

¹⁴ Bromley Briefings: Prison Factlife, Prison Reform Trust, November 2009

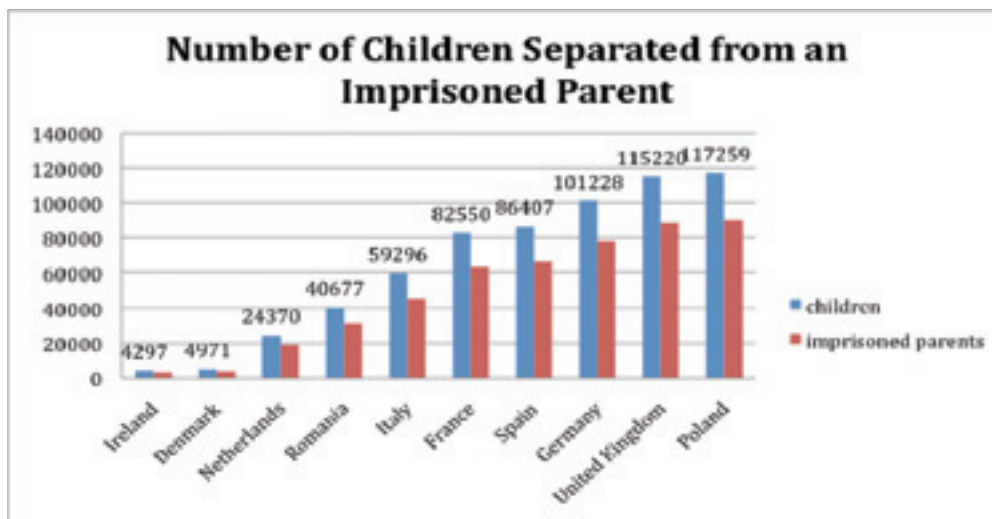
¹⁵ Parliamentary Assembly of the Council of Europe (2009) *Women in Prison* Parliamentary Assembly of the Council of Europe's Resolution 1663 of 28 April 2009 pt. 8.3

To compensate for this lack of systematised data, some countries have calculated 'parenting rates' for prison populations, used to carry out extrapolations. France uses a demographic parenting rate of 1.3 offspring per offender, based on the results of a study conducted by France's national statistics institute, INSEE, in 1999 as part of a national census, which included 1,700 male offenders. The UK Ministry of Justice uses a rate of 0.87 children per offender for England and Wales, while the Center for the Children of Imprisoned Parents in the United States uses the following formulae to estimate the number of children with imprisoned parents: # male offenders x 0.56 x 2 and # female offenders x 0.67 x 2.4. The formulae are based on findings from several studies that determined the average percentages of imprisoned women and imprisoned men with dependent children, and the mean number of dependent children per imprisoned mother and per imprisoned father.¹⁶ The Northern Ireland Prison Service estimates that some 1,500 children are impacted by parental imprisonment on a given day,¹⁷ basing extrapolations on figures recorded for visits to prison establishments during a given period of time.

¹⁶ Studies include Baunauch, P. J. (1979) *Mothering from Behind Prison Walls* Paper presented at the Annual meeting of the American Society of Criminology, Philadelphia, PA; Bloom, B. and Steinhart, D. (1993) *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America* San Francisco CA: National Council on Crime and Delinquency; Bureau of Justice Statistics; Gibbs, C. (1971) 'The Effect of the Imprisonment of Women Upon Their Children' *British Journal of Criminology*, Vol. 11, No. 2, pp. 113-130; Johnston, D. (1991) *Jailed mothers* Pasadena, CA: Pacific Oaks Center for Children of Incarcerated Parents; Koban, L. (1983) 'Parents in prison: A comparative analysis of the effects of incarceration on the families of men and women' *Research in Law, Deviance and Social Control*, Vol 5:171-183; Stanton, A.M. (1980) *When Mothers Go to Jail* Lexington, MA: Lexington Books; American Correctional Association (1990) *The Female Offender: What Does the Future Hold?* Washington, D.C.: St. Mary's Press ; Zalba, S. (1964) *Women prisoners and their families* Sacramento, CA: Department of Corrections ; Sack, W.; Seidler, J. and Thomas, S. (1976) 'The children of imprisoned parents: A psychosocial exploration' *American Journal of Orthopsychiatry* Vol 46, No. 4, pp. 618-627; U.S. Department of Justice (1993) Survey of state prison inmates, 1991 (NCJ-136949) Washington, D.C: Bureau of Justice Statistics Done, all cited in Gabel, K. and Johnston, D. (eds) (1995) *Children of Incarcerated Parents* New York: Lexington Books

¹⁷ Northern Ireland Prison Service (NIPS) (2010) Safeguarding Children Framework and Guidance p. 48

Using the French INSEE parenting rate, we can extrapolate that some 800,000 children in the European Union are separated from an imprisoned parent on a given day. Using Council of Europe statistics from 2007 (SPACE I), this gives the following figures:



Separated on a given day; annual figures for the number of children separated from an imprisoned parent would result in higher figure. Source: EUROCHIPS (based on COE Penal Statistics — SPACE 1 — 2007 (random selection of EU countries))

6. Research and reforms – a new agenda

So what can be done to address the problems that these children face and to make sure that the ‘forgotten victims’ of our system of punishment are no longer forgotten? Encouragingly, there are now some signs that these children are receiving increased attention. The UN Committee on the Rights of the Child is organising a Day of General Discussion in 2011 focusing on children with imprisoned parents – the first time that a UN body is focusing on the issue in depth. A non-legislative European Parliament resolution on the impact of parental detention on social life and family life voted unanimously in 2008 will help steer future European policy on family ties and imprisoned mothers.¹⁸ Research on children of imprisoned parents is surfacing in various countries and their problems and rights are being more widely discussed.¹⁹

With this study we hope to inform and strengthen these discussions greatly by providing robust data and research from several countries in the European Union and by supplying European and national policy makers with concrete, research based, and practically useful recommendations. Our recommendations are not the result of theoretical desk top research, but the product of a combination of academic research

¹⁸ Resolution on the situation of women in prison and the impact of detention of a parent on social life and family life 2007/2116 (INI), the Committee of Women’s Rights and Gender Equality (Rapporteur: Marie Cassioutou Panayotopoulos)

¹⁹ See, for example, ‘Children of Prisoners, Interventions, and Mitigations to Strengthen Mental Health’ (COPING), a transnational consortium involving Sweden, Germany, Romania, the UK and umbrella groups in France and Switzerland. The FP7 Framework study, relying on a sample of 1,000 children, aims to enhance the understanding of mental health needs of prisoners’ children and explore childhood resilience and coping strategies.

and the knowledge drawn from the experiences of practical national work with children of imprisoned parents, involving prison staff, police officers, social workers, prisoners' families, NGO's and many others. Furthermore, they are based on the premise that all countries within the EU are signatories to the UN CRC and European Convention on Human Rights and therefore have a duty to ensure that these rights are upheld in respect to children of imprisoned parents. We hope and believe that this has strengthened both the relevance and applicability of our work and recommendations, which, with this report, now lie open for policy makers, researchers, and other interested parties in Europe and elsewhere.

Chapter 2: Children of imprisoned parents and their problems

By Una Convery and Linda Moore

1. Introduction

The aim of this chapter is to highlight the problems experienced by children as a result of the imprisonment of their parent(s). It draws upon the literature which focuses on the impact of parental imprisonment and literature relating to the impact of imprisonment on families and siblings. The latter is included because the impact of imprisonment on a family as a whole is inevitably related to children's experiences, and provides a broader perspective of the experiences of children with siblings in prison. The literature review highlights the complex and multiple problems experienced by many children and the need for criminal justice and wider health, education and social care policies and practices to address the serious and wide-ranging implications of parental imprisonment. The subsequent sections outline the complex problems which the literature demonstrates prisoners' families and children may experience from arrest through to release.

2. Complex and multiple problems

The literature recognises that the problems experienced by prisoners' families and children are multiple and complex. The 'multiple difficulties and predicaments' they frequently experience and the severity of the impact of imprisonment on them, as noted by the European Committee for Children of Imprisoned Parents (EUROCHIPS),¹ are evidenced in research from across Europe. This research and wider international literature on parental imprisonment identify complex health, social and welfare disadvantages, including the impact of poverty, family discord, substance abuse and mental health issues.² The imprisonment of mothers, for example, has been described as having 'wreaked havoc on family stability and children's well-being'.³ Similarly, Rosenberg⁴ emphasises the detrimental impact that paternal imprisonment often has on children.

The wide-ranging and detrimental impact of imprisonment of any family member includes the strain it places on relationships within the family and wider community, and families experiencing social exclusion, financial difficulties, stigma and victimisation.⁵ The separation of children from their parents due to parental imprisonment 'can be a very traumatic experience',⁶ and poses 'profound and long-lasting'⁷ effects on children

¹ Ayre, L., Philbrick, K. and Reiss, M. (2006) *Children of Imprisoned Parents: European Perspectives on Good Practice* Paris: EUROCHIPS p. 8

² Johnson, E. and Waldfogel, J. (2002) 'Parental incarceration: Recent trends and implications for child welfare' *The Social Service Review* Vol. 76 No.3; Sheehan, R. and Levine, G. (2006) *Parents as Prisoners: Maintaining the parent-child relationship* Canberra: Criminology Research Council

³ The Rebecca Project for Human Rights and National Women's Law Centre (2010) *Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children* Washington: National Women's Law Centre p. 9

⁴ Rosenberg, J. (2009) *Children Need Dads Too: Children with Fathers in Prison* Geneva: Quaker United Nations Office

⁵ Nesmith, A. and Ruhland, E. (2008) 'Children of incarcerated parents: Challenges and resiliency, in their own words' *Children and Youth Services Review* Vol. 30 No. 10 pp. 1119-1130

⁶ King, D. (2002) *Parents, Children and Prison: Effects of Parental Imprisonment on Children* Dublin: Dublin Institute of Technology p. 10

'over and above separation experiences and the concomitant risks'.⁸ The consequences for children may be emotional, physical and developmental, whereby the imprisonment of a parent may impact on children's health, education, leisure, housing, material goods, and relationships with their imprisoned parent(s), other family members, friends, peers and teachers. In addition to the potential effects of 'stigma and reduced family income' caused by imprisonment, EUROCHIPS⁹ notes concerns about the impact of 'inadequate explanations of the imprisoned parent's circumstances', and the risk that children will replicate their parent's behaviour.

The problems experienced by children of imprisoned parents are compounded further by the fact that their lives, prior to parental imprisonment, tend to be characterised by social, economic, health and educational disadvantage. King,¹⁰ for example, highlights the issues of child poverty and educational disadvantage among children prior to parental imprisonment and Murray *et al*¹¹ emphasise the need to acknowledge the existence of disadvantages in children's lives before parental imprisonment occurred. As argued by Murray:¹²

[Prisoners' children] are vulnerable to multiple types of social exclusion, including: pre-existing deprivation; loss of material and social capital following imprisonment; stigma; 'linguistic exclusion'; political exclusion; poor future prospects; and administrative invisibility.

In addition, as noted by EUROCHIPS,¹³ 'children of imprisoned parents are confronted [with] migration problems, drug or alcohol addicted parents, or violent or abusive parents more often than other children'.

The multiple disadvantages experienced by prisoners' families and their children are discussed in further detail in the sections below. Whilst the influence of a diverse range of variables, such as pre-existing deprivation, age, gender, race, relationships, support, the number of previous separations and the length of separation, on children's experiences of parental imprisonment is acknowledged, the discussion focuses on highlighting key themes relating to the specific problems experienced by children of imprisoned parents. As indicated in the literature,¹⁴ further research in to, and consideration of, children's experiences of parental imprisonment in relation to the range of variables which influence the impact of parental imprisonment requires further attention to enhance the understanding of the impact of parental imprisonment and the responses required to adequately address the needs of prisoners' children.

⁷ Robertson, O. (2007) *The Impact of Parental Imprisonment on Children* Geneva: Quaker United Nations Office p. 9

⁸ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above p. 8

⁹ As above p. 8

¹⁰ King, D. (2002) as above

¹¹ Murray, J., Farrington, D. P. and Sekol, I. and Olsen, R. (2009) *Effects of parental imprisonment on child antisocial behaviour and mental health: a systematic review* Norway: The Campbell Collaboration p. 6

¹² Murray, J. (2007) 'The Cycle of Punishment: Social exclusion of prisoners and their children' *Criminology and Criminal Justice* Vol. 7 No. 1 pp. 55- 81 p. 55

¹³ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above p. 13

¹⁴ Ministry of Justice and Department of Children, Schools and Families (2007) *Children of Offenders Review* London: Ministry of Justice

3. Invisible victims and inadequate official support

The literature identifies the unique vulnerabilities of prisoners' children and need for 'specific forms of assistance' for children and families of prisoners.¹⁵ However, as noted by EUROCHIPS, children with imprisoned parents 'are frequently overlooked as comprising a group in its own right, let alone one with special needs'.¹⁶ This lack of attention prevails despite concerns raised in 1996 by the European Action Research Committee that 'the children of prisoners do not benefit from any specific rights or benefits'.¹⁷ Where increases in official interest in prisoners' families have occurred, they have been deemed by Mills and Codd,¹⁸ among others, to stem from the recognition of the positive impact of family support on recidivism, as opposed to concerns about addressing the particular needs of prisoners' children. Marshall,¹⁹ for example, describes children with imprisoned parents as 'the invisible victims of crime and the penal system'.²⁰ She recognises that 'they suffer the stigma of criminality' and explains that their rights to nurture are affected by their parents' actions and the state's response, whereby the laws and rules that shape the penal system fail to take account of children as persons in their own right and merely recognise them 'as aids to the rehabilitation of their parent'. Glover also raises concerns that policy responses tend to 'focus on how children can contribute to the prisoner's rehabilitation, rather than how they are coping, or whether their rights, as children, are upheld'.²¹

Comparing the attention given to other life-changing events that impact on children's wellbeing, Browne²² highlights the lack of attention given to the needs of children when their parents are imprisoned and criticises the lack of statutory and co-ordinated support for prisoners' families. Despite acknowledging the limited awareness of the needs of children with imprisoned parents and the absence of systematic support, state responses remain limited. For example, in relation to the United Kingdom (UK), Glover²³ documents how the government recognises poor outcomes for children of prisoners and that they are a vulnerable group requiring additional support, but does not recognise them as 'children in need' or as a priority group. Consequently, prisoners' children 'come very low down the list of priorities and are unlikely to be offered any targeted support' and are 'denied the protection and support' required by child-welfare legislation.²⁴ Indeed, throughout the literature concerns are raised in relation to services for children of imprisoned parents, and the fragmented and uncoordinated response by state agents, including health, welfare, education and criminal justice providers.²⁵ Concerns raised include the lack of inter-service information sharing about

¹⁵ King, D. (2002) as above p. 5

¹⁶ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above p. 8

¹⁷ Brown, K., Dibb, L., Shenton, F. and Elson, N. (2001) *No-one's Ever Asked Me: Young People with a Prisoner in the Family* London: Action for Prisoners' Families p. 4

¹⁸ Mills, A. and Codd, H. (2008) 'Prisoners' Families and Offender Management: Mobilising Social Capital' *The Journal of Community and Criminal Justice* Vol. 55 No. 1 pp. 9-24

¹⁹ Marshall (2008) *Not Seen. Not Heard. Not Guilty: The Rights and Status of the Children of Prisoners in Scotland* Edinburgh: Scotland's Commissioner for Children and Young People p. 8

²⁰ One exception is the European Parliament resolution of 13 March 2008 on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (2007/2116 (INI)), drafted by the Committee on Women's Rights and Gender Equality (Rapporteur: Marie Panayotopoulos-Cassiotou).

Although the resolution is non-legislative, it will inform future European policy on family ties and imprisoned parents

²¹ Glover (2009) *Every night you cry: the realities of having a parent in prison* Essex: Barnardos p. 2

²² Browne (2007) *Research on Prisoners' Families: An Update, Addendum to Doctor Browne's Paper of 2005* London: Action for Prisoners' Families

²³ Glover (2009) as above

²⁴ Glover (2009) as above p. 10

²⁵ Sheehan, R. and Levine, G. (2006) as above; Loureiro, T. (2010) *Perspectives of Children and Young People with a Parent in Prison* Edinburgh: Scotland's Commissioner for Children and Young People; Scharff Smith, P.

the circumstances of prisoners' children and the resulting lack of knowledge which social services and schools, for example, have about the problems children may be experiencing, and their needs. A further, related concern is the lack of service providers' awareness training on how to address the needs of prisoners' children.²⁶ In the UK-based study by Smith *et al*,²⁷ where social services were approached for support, or interventions were made against the wishes of the family, perceptions were of either inadequacy and lack of support, or a damaging experience. Drawing upon a further UK-based study, EUROCHIPS²⁸ notes that Pugh's research found a limited proportion of carers (about a fifth) may have contact with social services and social workers may be viewed with suspicion or hostility; however, at least half of the women in the study who did have contacts found them supportive.

An additional concern about the lack of recognition of prisoners' children is raised in the literature in relation to research. Children are described throughout the literature as being neglected, ignored or overlooked in research as well as in policy and the provision of support. Despite 'a surge of research interest' in children of prisoners since 2000,²⁹ calls are reiterated for more extensive and robust research in to the impact of parental imprisonment on children and their needs. Murray,³⁰ for example, argues that 'children experiencing parental imprisonment ... need political recognition, research attention and evidence-based support'. He calls for large-scale research projects which calculate the costs of imprisonment for children, families and the community, and identify effective interventions. The need for longitudinal studies is raised, for example by EUROCHIPS, 'to identify and better understand the mechanisms by which parental imprisonment affects children'.³¹ In addition, attention is drawn to the need to provide children of prisoners with greater opportunities to tell their own stories,³² given the lack of children's involvement in research, as summarised by Nesmith and Ruhland:³³

In the realm of research... the vast majority of studies have garnered information about children from adult sources...with little if any emphasis on the feelings, thoughts, and ideas formulated by the children themselves.

Rosenberg³⁴ notes that due to large research gaps regarding the needs of children of incarcerated fathers, information is also lacking on how children may maintain a healthy relationship with imprisoned fathers, positive parenting by men in prisons and how to deliver and evaluate family strengthening and child support programmes aimed at this group. In addition to the children of imprisoned fathers being neglected in research, she strongly criticises their neglect in policy and support programmes.³⁵ Roberston³⁶ also draws attention to the fact that the failure to consider or consult children of imprisoned parents from arrest, to trial, to imprisonment, to release, to

and Jakobsen, J. (2009) 'The children pay the price' in A. Molbech *Children of Prisoners: A Story about the Englesborg Family House* Denmark: Engelsborg Halfway House and Danish Prison and Probation Service

²⁶ Social Exclusion Unit (SEU) (2002) *Reducing Re-Offending by Ex-Prisoners* London: Social Exclusion Unit

²⁷ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) *Poverty and Disadvantage among Prisoners' Families* York: Joseph Rowntree Foundation

²⁸ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above

²⁹ Murray, J., Farrington, D. P. and Sekol, I. and Olsen, R. (2009) as above p. 19

³⁰ Murray, J. (2007) as above p. 73

³¹ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above

³² Cúnamh (2001) *Déagóirí Le Chéile - Research Report* Derry: Cúnamh; Loureiro, T. (2010) as above;

Poehlmann, J. (2005) 'Representations of attachment relationships in children of incarcerated mothers' *Child Development Vol. 76 No. 3* pp. 679-696

³³ Nesmith, A. and Ruhland, E. (2008) as above p. 1119

³⁴ Rosenberg, J. (2009) as above

³⁵ As above p. 1

³⁶ Robertson, O. (2007) as above p. 7

rehabilitation in the community 'can result in their rights, needs and best interests being overlooked or actively damaged'. An EU-funded transnational consortium study currently being carried out in Romania, Sweden, Germany and the UK, will help bridge this research gap. 'COPING – Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health',³⁷ which aims to enhance the understanding of mental health needs of prisoners' children and explore childhood resilience and coping strategies, includes the participation of children of imprisoned parents (n=1,000) in the four countries.

4. Disruption to care

The literature demonstrates the significant disruption that parental imprisonment has on children's care, and the resulting emotional and financial costs of the separation of children from their parent(s). It impacts on the maintenance of family ties, carers' finances, health and time, and consequently on the support available for children.³⁸ Changes in care arrangements may also mean that children have to cope with additional stressful situations such as moving house and school.³⁹ Children's care may be further disrupted due to multiple placements with different relatives.⁴⁰ The disruption to their care is all the more severe where children are separated from their natural family and taken in to care, fostered or adopted. In addition, 'enormous pressures' may be placed on children if they have to take on a caring role for younger siblings and other household responsibilities.⁴¹ Care arrangements may also result in difficulties for children visiting their parents in prison, in particular when children are taken in to care.⁴²

Where children are cared for by both parents, the imprisonment of either their mother or father increases the likelihood that their parents will live separately post-release. This is demonstrated by research which has found that maternal imprisonment, even for short periods, following release increases the likelihood of divorce and decreases the likelihood that mothers will reside with the father of at least one of their biological children.⁴³ In relation to paternal imprisonment, Rosenberg⁴⁴ notes that in some prisons the divorce rate is estimated to be as much as seven times the national average.

Notwithstanding the disruption to children's care following paternal imprisonment, research suggests that the extent of the disruption is greater following maternal imprisonment. Children are more likely to live with their mother following paternal imprisonment than they are to live with their father following maternal imprisonment and are more likely to be taken in to care following maternal imprisonment.⁴⁵ The Rebecca Project for Human Rights and the National Women's Law Centre⁴⁶ notes that,

³⁷ COPING (2010-2013) is funded by the EU Seventh Framework Programme.

³⁸ Sheehan, R. and Levine, G. (2006) as above; Social Exclusion Unit (SEU) (2002) as above; Poehlmann, J. (2005) as above

³⁹ Social Exclusion Unit (SEU) (2002) as above; Loureiro, T. (2010) as above

⁴⁰ Poehlmann, J. (2005) as above

⁴¹ Social Exclusion Unit (SEU) (2002) as above p. 117; Rosenberg, J. (2009) as above; Nesmith and Ruhland (2008) as above p. 1119

⁴² Social Exclusion Unit (SEU) (2002) as above

⁴³ Arditti, J. and Few, A. (2006) 'Mothers' Reentry into Family Life Following Incarceration' *Criminal Justice Policy Review Vol. 17 No. 1* pp. 103-123

⁴⁴ Rosenberg, J. (2009) as above

⁴⁵ Bloom, B., Owen, B. and Covington, S. (2003) *Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders* Washington DC: US Department of Justice, National Institute of Corrections; The Rebecca Project for Human Rights and National Women's Law Centre (2010) as above

⁴⁶ The Rebecca Project for Human Rights and National Women's Law Centre (2010) as above

following paternal imprisonment, 90 percent of the time the child will live with their mother, compared with children living with their father 25 per cent of the time when a mother is imprisoned. As a consequence, children 'may experience a succession of different carers and be less likely to be reunited with their mothers on return'.⁴⁷

Reporting to the European Parliament, Panayotopoulos-Cassiotou noted the complete disruption to family life that can result from a mother's imprisonment. She noted that the average age of the majority of imprisoned women in Europe is between 20 and 40 years and as a consequence they are likely to be, or become, mothers. In addition, she noted that mothers at the time of their arrest are often the primary or the only carers of their children, citing UK-based research which found that the majority of females in prison were mothers (66 per cent) and had at least one child under 16 (55 per cent), over a third of mothers had one or more children under the age of 5 and were single parents before prison, with the proportion rising for those who expected to be single post-release.

The imprisonment of mothers, compared with fathers, is associated with placing a greater strain on extended family networks, with grandparents and siblings adopting carer responsibilities. King⁴⁸ notes the upheaval this causes for children and the strain placed on grandparents who find it difficult to resume the role of primary carer. In addition, research indicates that carers experience difficulties in providing support to children following parental imprisonment due to health and financial difficulties. Poehlmann,⁴⁹ for example, points to literature which documents the presence of mental health risks in grandparents raising their grandchildren and found that 'more than 40 per cent of caregivers experienced depressive symptoms in the clinical range'. Concerns about the difficulties carers of prisoners' children experience, discussed in more detail below, include accessing financial support.⁵⁰ The extent of these concerns is highlighted by Rosenberg's⁵¹ description of the difficulties experienced by children's mothers or other carers and the potential negative effects for children following paternal imprisonment:

The potential emotional stress, parenting strain, work-family conflict, financial hardship and social stigma faced by the mother or other carers can result in poverty, fragile parenting, declining family health and the onset of changes in children's behaviour. Many parents/carers specifically report declining health for themselves and the children in these cases.

The strain on mothers caused by paternal imprisonment, as noted by Smith *et al*,⁵² is emphasised by concerns that the pressures are greater than those where separation is caused by divorce or death. In their study, partners of prisoners described symptoms of a grief reaction where manifestations of loss and distress included strong feelings of depression, psychosomatic illness, eating disorders and self-harm. The impact of pressures experienced by carers on children's health and behaviour is discussed further below. As noted by Smith *et al*,⁵³ behavioural manifestations of developmental difficulties have been linked to the strain of imprisonment on carers due to reduced

⁴⁷ Cited in Scraton, P. and Moore, L. (2007) *The Prison Within: The Imprisonment of Women at Hydebank Wood 2004-2006* Belfast: NIHR p. 104

⁴⁸ King, D. (2002) as above

⁴⁹ Poehlmann, J. (2005) as above p. 691

⁵⁰ Social Exclusion Unit (SEU) (2002); Rosenberg, J. (2009) as above

⁵¹ Rosenberg, J. (2009) as above p. 12

⁵² Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) as above

⁵³ As above

finances, disruption to accommodation and education, depression and poor-quality parenting.

5. Financial difficulties

The economic and social costs of imprisonment for prisoners' families and children, whereby it creates and exacerbates poverty, are clearly documented in the literature. For example, based on their UK study Smith *et al*⁵⁴ note that:

[W]hile the premise of criminal justice policy is to punish the offender, the effect of the criminal justice system as it currently operates, and in conjunction with other branches of social policy, is a significant economic punishment for the family.

Imprisonment is shown to have a detrimental impact on families' financial situations and the literature documents the extended effects of reduced income and poverty on children's lives, including a negative impact on their living standards, housing, health and development. Imprisonment places a financial strain on families where the income of the family may be affected due to changes in employment circumstances and benefit provision, and the expense incurred by families through the provision of money and clothing for prisoners, and visiting costs. It therefore destabilises families' financial situation and puts children at risk of relative poverty or exacerbates pre-existing poverty which, as noted above, tends to characterise the lives of prisoners' families prior to imprisonment. The imprisonment of both resident and non-resident parents has been found to have an effect on contributions to families' financial resources and Smith *et al*⁵⁵ found that families are adversely affected by imprisonment irrespective of family structure and employment status prior to imprisonment.

The negative effects of imprisonment on children's economic status in King's⁵⁶ review of the international literature concerning children of prisoners and his Republic of Ireland-based research, reveal the financial pressures, as noted above, experienced by children's extended families and impact on participation in activities, such as days out and holidays. Children's comments included in Hall's⁵⁷ Northern Ireland-based study provide an insight in to the impact of reduced income and curtailed activities:

With my daddy in jail there was less money, and not very much pocket money. Mummy was hard on you because you always asked for money and she didn't have it. You weren't allowed to stay out late because your mummy was too overprotective.

What I hated most was not being able to do what other children did with their daddies – like playing football and going places – you felt left out and lonely.

As outlined by King,⁵⁸ children and their carers may be adversely affected by the imprisonment of a parent who contributed financially to the family prior to imprisonment. Due to difficulties finding employment post-release, the loss of income may extend beyond the period of imprisonment. In addition, King notes that carers may have to take up or change their employment in order to provide for children and this

⁵⁴ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) as above p. 1

⁵⁵ As above

⁵⁶ King, D. (2002) as above

⁵⁷ Hall, M. (2000) *Left In Limbo: The Experiences of Republican Prisoners' Children* Island Pamphlets No 31. Newtownabbey: Island Publications p. 10

⁵⁸ King, D. (2002) as above

may reduce the amount of attention children receive. Conversely, Smith *et al*⁵⁹ note that carers may be forced to prioritise caring responsibilities above economic gain and carers, including extended family members such as grandparents, may have to leave employment to care for children within the context of reduced income.

Rosenberg,⁶⁰ drawing upon research from the UK and USA, also notes the increased risk of debt for families due to financial disruption caused by loss of income and pressure on inadequate incomes, and explains that financial difficulties experienced by prisoners' families are compounded by the new expenses they incur, including sending money to prisoners, phone calls and visiting prisoners. In a British study, Smith *et al*⁶¹ calculated that such costs over six months for prisoners' families no longer in receipt of benefit incomes covering the prisoner, included an average of £208 for the imprisoned family member, an average of £62 for clothing and an average of £388 in visiting costs. Where financial schemes do exist, for example to assist with visiting costs, there are concerns that children tend not to be eligible to avail of the assistance. This is the case in relation to the Assisted Prison Visits Scheme in England and Wales, which excludes children from the eligibility criteria for assistance.

Smith *et al*⁶² suggest that further costs may be experienced by families due to the imprisonment of resident or non-resident parents who provided unpaid childcare and household repairs prior to their imprisonment. Attention is also drawn to the inadequacy of benefit entitlements to alleviate economic hardships experienced by prisoners' families and children, and policies such as those which aim to tackle poverty through employment, despite the fact that prisoners' families often prioritise caring responsibilities over employment.⁶³ King⁶⁴ notes the possibility that parental imprisonment could result in social welfare payments providing families with a more stable income. The potential benefits of social welfare are also noted by Murray *et al* in relation to their Swedish study. They suggest that the effects of parental imprisonment might have been mitigated due to Sweden's social welfare system protecting prisoners' children, in particular working-class children, from economic and social diversities. However, as Smith *et al* indicate in relation to their British study, families may be faced with additional anxieties as the time taken to process welfare benefit transitions may cause income disruption, debt, rent arrears and eviction threats.⁶⁵ They found that prisoners' families and children living in privately rented housing are at particular risk of housing disruption if benefit claims are delayed. They also note that housing disruption is caused by threats of violence and revenge attacks, and provide an insight in to the risk of homelessness for families of prisoners, citing two examples of families that lost their homes and acknowledging that others in their research 'came perilously close'.⁶⁶ Furthermore, they draw attention to the fact that families of foreign nationals convicted of an offence are at particular risk of catastrophic financial and social consequences, due to the potential permanent loss of a parent through deportation.

⁵⁹ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2007) as above

⁶⁰ Rosenberg, J. (2009) as above

⁶¹ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above

⁶² As above

⁶³ Rosenberg, J. (2009) as above; Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above

⁶⁴ King, D. (2002) as above

⁶⁵ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above p. 32

⁶⁶ as above

6. Relationship disruptions

It is recognised throughout the literature that separation due to parental imprisonment alters, and may lead to a breakdown in, parent/child relationships and may cause difficulties in building relationships post-release. Rosenberg,⁶⁷ for example, describes parent/child relationships during imprisonment as tenuous at best, and recognises that disruption to relationships following imprisonment reduces children's opportunities to receive emotional or social support from imprisoned parents. Children's opportunities for sustaining relationships with their imprisoned parents are particularly limited where they do not visit their imprisoned parent.⁶⁸ The negative impact of imprisonment on parent/child relationships and the extent to which children cease to have contact with parents when they are in prison is documented throughout the literature.⁶⁹ Less than half of the children (40 per cent) in Chui's⁷⁰ China based research, for example, visited their parent in prison. Rosenberg⁷¹ documents figures for the USA, where 78 per cent of mothers and 62 per cent of fathers reported having some type of monthly contact with their children and 60 per cent and 40 per cent of fathers reporting at least weekly contact. However, she also notes a recent study which indicates that two-thirds of imprisoned fathers in the USA had never received a visit from their child. In relation to the UK, only about two thirds of prisoners in local prisons and about half in training prisons received their statutory entitlement of visits, and 29 per cent of men and 47 per cent of women in prison reported that they experienced difficulties keeping in touch with friends and families.⁷² Such figures demonstrate the extent to which imprisonment may disrupt parent/child relationships in terms of lack of, or no, contact children may have with their parent during the period of imprisonment. The difficulties children and families experience in relation to visiting prisons is discussed in the section below on visits.

Meanwhile, it is worth noting that disruption to relationships due to lack of contact between children and their parent through prison visits, may lead children to experience the absent parent as a stranger. This in turn may place additional pressures on parent/child relationships post parental release, including resistance to the authority of parents following their return home from prison.⁷³ Children in Hall's⁷⁴ study told how the returning parent tried to regain authority and how they resisted this:

My daddy got out in December and he tried to dictate to me on his third day out. It didn't work, like, 'cause I didn't listen to him; but that started us off; we didn't really speak then; I wouldn't speak to him for ages... It's starting to get a bit better but it's still awkward 'cause I wouldn't even look at him as a father'.

⁶⁷ Rosenberg, J. (2009) as above

⁶⁸ Poehlmann, J., Schlafer, R., Maes, E. and Hanneman, A. (2008) 'Factors associated with young children's opportunities for maintaining family relationships during maternal incarceration' *Family Relations Vol. 57 No. 3* pp. 267-280

⁶⁹ Chui, W. (2010) 'Pains of Imprisonment': Narratives of the women partners and children of the incarcerated' *Child and Family Social Work Vol. 15 No. 2* pp. 196-205

⁷⁰ as above

⁷¹ Rosenberg, J. (2009) as above

⁷² HM Inspectorate of Prisons and HM Inspectorate of Probation (2001) *Through the Prison Gate: A Joint Thematic Review by HM Inspectorates of Prisons and Probation* London: HMIP

⁷³ Rolston, B. and Tomlinson, M. (1986) 'Long-term imprisonment in Northern Ireland: psychological or political survival?' in *The Expansion of European Prison Systems* (Working papers in European Criminology No. 7), Stockholm: The European Group for the Study of Deviance and Social Control

⁷⁴ Hall, M. (2000) as above p. 15

Whenever they went in we were kids, when they're coming back out they're thinking we're going to be the same as we were, that things are going to be the same as it was then. But it's not; we're older now and have got our own lives.

Children are also at risk of 'uncertain and discontinuous' relationships with siblings and carers,⁷⁵ and experiencing 'strained or changed'⁷⁶ extended family relationships following parental imprisonment and release. Poehlmann's⁷⁷ research demonstrates the impact of maternal imprisonment on children's relationships with their carer and mother, and suggests that 'very young children are particularly vulnerable to relationship disruption when mothers are incarcerated'. The majority of children in her study (63 per cent) were classified as having insecure relationships with their carers and imprisoned mothers. Children subjected to one or more placements were most at risk of insecure relationships with carers, given that children living with the same carer since separation from their mother were 85 times more likely to have a secure relationship with their carer.

Smith *et al*⁷⁸ found that the myriad of problems caused by damaged relationships as a result of imprisonment were experienced as intolerable. Familial problems were most notable where the extended family could not, or did not, provide material and emotional support and, in relation to release, families were apprehensive about the difficulties of reintegration.

7. Health and wellbeing

Research shows that children are at risk of being traumatised through their exposure to a parent's arrest, imprisonment and release,⁷⁹ and the severity of the damage may be intensified by children's experiences of repeated parental arrests and separations. In relation to arrests, research⁸⁰ indicates that children's experience of witnessing the arrest of a family member alone or in conjunction with the recent arrest of a parent is predictive of elevated symptoms of post-traumatic stress. Marshall notes that some children have 'frightening and bewildering experiences when their parent is arrested at home',⁸¹ and arrest and trial processes have been shown to have a significant impact on how teenagers' related to the imprisonment of a family member.⁸² In her review of the literature, Loureiro⁸³ notes that the arrest of a parent in front of a child 'can leave emotional scars' and continues:

The trauma of watching a parent being arrested is so big for the child ... They may progress to see the system with hostility and scepticism, especially if they believe a relative was unjustly punished ... the trauma ... can be more severe if the arrest involves violence and force ... In a situation where one parent has killed the other, the child loses both parents at the same time. Even when it is a relief for the child, because of the

⁷⁵ Poehlmann, J., Shlafer, R., Maes, E. and Hanneman, A. (2008) as above p. 267

⁷⁶ Cúnamh (2001) as above p. 14

⁷⁷ Poehlmann, J. (2005) as above p.692

⁷⁸ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above

⁷⁹ Comfort, M.L. (2007) 'Punishment Beyond the Legal Offender' *Annual Review of Law and Social Science Vol. 3* pp. 271-96

⁸⁰ Phillips, S. and Zhao, J. (2010) 'The relationship between witnessing arrests and elevated symptoms of posttraumatic stress: Findings from a national study of children involved in the child welfare system' *Children and Youth Services Review Vol. 32 No. 10* pp. 1246-1254

⁸¹ Marshall, K. (2008) as above p. 4

⁸² McCulloch, C. and Morrison, C. (2001) *Teenagers with a Family Member in Prison* Edinburgh: Families Outside

⁸³ Loureiro, T. (2010) as above pp. 13-14

constant conflicts, it is always traumatic ... Furthermore, the child can feel conflicting emotions such as relief, uncertainty and culpability, particularly if the parent was arrested for an offence against the child.

Children's experiences of parental arrest and imprisonment documented in Hall's⁸⁴ Northern Ireland-based study reveal feelings of fear and annoyance about house raids and searches by the police and army:

It was frightening. If you didn't get a chance to open the door they just smashed it through or something.

For me it was more annoying than frightening, 'cause they usually done it at five o'clock in the morning when you're asleep and lying comfortable.

The stress experienced by children is demonstrated by the multiple emotional and behavioural reactions of the majority of children to parental imprisonment. The separation of children from their parent(s) through imprisonment may result in the loss of their main emotional and psychological resource, which may compromise their emotional, cognitive and social development.⁸⁵ The literature reveals that common reactions by children include sadness, confusion, depression, worry, anger, aggression, fear, developmental regressions such as bed-wetting, sleep problems, eating disorders and hyperactivity. Boswell,⁸⁶ for example, found that most children expressed feelings of sadness or distress and mentioned negative changes in their lives as a result of parental imprisonment. Children have also been found to be 'vulnerable to suffering significant attachment disorders' and to be more prone to drug and alcohol addiction, criminal activity, sexual promiscuity and educational underattainment.⁸⁷ Outlining the range of physical and mental health problems that children of imprisoned parents 'often suffer from', Rosenberg⁸⁸ also includes 'running away, truancy and poor school grades'. In addition, changes in children's behaviour following parental imprisonment, as identified by carers,⁸⁹ include increased aggression, withdrawal and problems at school.

The trauma and loss experienced by children following parental separation due to imprisonment has also been found to lead to self-blame guilt and worry about carers.⁹⁰ Research has shown that children recognise the difficulties experienced by carers and harbour concerns about the impact on their carers.⁹¹ In relation to feelings of guilt, Rosenberg⁹² notes that the situation may be even worse for children who are victims of parental crime given that they may feel additional guilt or responsibility for the arrest.

⁸⁴ Hall, M. (2000) as above p. 6

⁸⁵ Bouregba, A. (2007) 'Soutenir les relations enfants-parents compromises par l'incarcération: pourquoi et jusqu'où?' Liège: *A Parent in Prison: Children's Experiences*, conference organised by the Fonds Houtman and O.N.E. 5 October 2007

⁸⁶ Boswell, G. (2002) 'Imprisoned Fathers: The Children's View' *The Howard Journal* Vol. 41 No. 1 pp. 14-26

⁸⁷ The Rebecca Project for Human Rights and National Women's Law Centre (2010) as above p.13

⁸⁸ Rosenberg, J. (2009) as above p. 12

⁸⁹ Tudball, N. (2000) *"DOING IT HARD" - A Study of the Needs of Children and Families of Prisoners in Victoria* Melbourne: VACRO

⁹⁰ Boswell, G. (2002) as above; Nesmith, A. and Ruhland, E. (2008) as above; Pugh, G. (2004) *Sentenced Families: Signs of Change for Children with a Parent in Prison* Ipswich: Ormiston Children and Families Research; Travis, J., Mc Bride, E. and Soloman, A. (2005) *Families left Behind: The Hidden Costs of Incarceration and Re-entry* Washington DC: Urban Institute, Justice Policy Center; Spence, L. (2002) *Unheard Voices: The Experiences and Needs of Children of Loyalist Political Ex-Prisoners* Belfast: EPIC

⁹¹ Chui, W. (2010) as above

⁹² Rosenberg, J. (2009) as above

The literature reviewed by Loureiro,⁹³ as noted above, also demonstrates the conflicting emotions that children in such situations may experience due to the combination of relief with feelings of uncertainty and culpability. Such situations may arise where parental separation is in the best interests of children subjected to parental abuse. The literature suggests that whilst this may apply to some children, parental imprisonment 'may negatively affect the majority of children'.⁹⁴

The literature indicates that children's behavioural reactions to parental imprisonment differ according to whether their mother or father is imprisoned. Rosenberg⁹⁵ notes that 'acting-out' behaviours, which tend to be associated with paternal imprisonment, include hostility, use of drugs or alcohol, running away, school truancy, discipline problems, aggressive acts and involvement in delinquent activities. She explains that 'acting in' behaviours, which tend to be associated more with maternal imprisonment, include daydreaming, unwillingness to engage in play, fear of school, a drop in school work, being highly emotional and having nightmares. Whilst a distinction may be drawn between the behaviours exhibited following paternal and maternal imprisonment, the common theme is the potential devastating impact that paternal imprisonment may have on children's health and wellbeing, and the potential long-lasting consequences for children.

Children who have a parent in prison have been found to be more likely than their peers to experience mental ill health.⁹⁶ Drawing on the literature, Glover⁹⁷ notes that prisoners' children are more than twice as likely to have mental health problems during their life course compared to their peers. Whilst Murray *et al*,⁹⁸ acknowledge the difficulties in determining the impact of parental imprisonment on children's mental health, their meta-analysis of 16 research studies showed that prisoners' children are more likely than other children to exhibit mental health problems. They draw particular attention to a study by Wakefield which showed strong and significant increases in child mental health problems following parental imprisonment. Their review of mental health problems is restricted to internalising problems which primarily refer to anxiety and depression. It showed that children of prisoners have twice the risk for poor mental health problems compared with their peers and therefore they conclude that parental imprisonment is 'quite a strong risk factor' for poor mental health outcomes.⁹⁹ The Social Exclusion Unit,¹⁰⁰ however, reported that nearly 30 per cent of children with a parent in prison experience mental health problems, compared with 10 per cent of the general population.

The distress that children may experience as a result of parental imprisonment is highlighted by the comparison drawn by Roberston¹⁰¹ between the feelings of loss and grief experienced by children due to parental imprisonment and bereavement of a loved one. Recognising that the nature of the loss may present a barrier to the normal outlets for grieving and difficulties carers experience in providing children with

⁹³ Loureiro, T. (2010) as above

⁹⁴ Wildeman, C. (2009) 'Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage' *Demography* Vol. 46 No. 2 pp. 265–280 p. 266

⁹⁵ Rosenberg, J. (2009) as above

⁹⁶ Boswell, G. and Wedge, P. (2002) *Imprisoned Fathers and their Children* London: Jessica Kingsley; Glover, J. (2009) as above; Social Exclusion Unit (2002) as above

⁹⁷ Glover, J. (2009) as above

⁹⁸ Murray, J., Farrington, D. and Sekol, I. and Olsen, R. (2009) as above p. 6

⁹⁹ as above p. 56

¹⁰⁰ Social Exclusion Unit (SEU) (2002) as above

¹⁰¹ Robertson, O. (2007) as above

emotional support, Glover¹⁰² suggests that the impact on children's mental health is unsurprising.

The extreme impact that parental imprisonment may have on children's health is clearly demonstrated in Loureiro's¹⁰³ review of the literature which documents key themes, including the extent to which parental imprisonment can be a stressful and traumatic event, and the increased risk of developing post-traumatic stress disorder for children who experience parental imprisonment. As noted above, trauma may be experienced from the point of arrest particularly if children watch the parent being arrested and, where violence or force is used against the parent during the arrest, the trauma may be more severe.

Health concerns are also raised in the literature about the potential poor health outcomes for children born in prison¹⁰⁴ and in relation to the impact of the prison environment on children. Documenting a case study of a prison in Bolivia, where children may live with both their mothers and fathers in prison until the age of 6 years, and may remain beyond this legal age limit, Rosenberg¹⁰⁵ highlights how prison environments can be detrimental to children's wellbeing. However, in view of the disadvantages of separating a child from his or her mother, EUROPOCHIPS¹⁰⁶ argues that 'the effects of detention on a child's development can be reduced'. Recognising the potential serious consequences for children if detained in poor or severely restrictive conditions, it suggests that it would be feasible for a child to stay for a long period of time with his or her mother 'if imprisonment occurs in a relatively calm and open environment and conditions are not overly restrictive'.¹⁰⁷ Hoffmann *et al*¹⁰⁸ advocate in-prison and/or community-based residential facilities where parents can live with their children to overcome concerns about distance between children and incarcerated parents.

A further concern raised in the literature is that the negative stresses caused by imprisonment increase children's risk of becoming involved in delinquent behaviour and the criminal justice system. Due to the multiple difficulties which children may experience as a result of parental imprisonment Johnston,¹⁰⁹ for example, draws attention to the potential future imprisonment of children:

[P]arental crime, arrest, and incarceration interfere with the ability of children to successfully master developmental tasks and to overcome the effects of enduring trauma, parent-child separation, and an inadequate quality of care. The combination of these effects produces serious long-term outcomes, including intergenerational incarceration.

Based on their assessment of the correlation between antisocial and delinquent behaviour, and parental imprisonment during childhood for an English cohort, Murray

¹⁰² Glover, J. (2009) as above

¹⁰³ Loureiro, T. (2010) as above

¹⁰⁴ The Rebecca Project for Human Rights and National Women's Law Centre (2010) as above

¹⁰⁵ Rosenberg, J. (2009) as above

¹⁰⁶ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above p. 72

¹⁰⁷ as above p.72

¹⁰⁸ Hoffmann, H., Byrd, A. and Knightlinger, A. (2010) 'Prison Programs and Services for Incarcerated Parents and Their Underage Children: Results From a National Survey of Correctional Facilities' *The Prison Journal Vol. 90 No. 4* pp. 397-416

¹⁰⁹ Johnston, D. (1995) 'Effects of Parental Incarceration' in Gabel, K. and Johnston, D. (eds) *Children of Incarcerated Parents* New York: Lexington Books

and Farrington¹¹⁰ suggest that ‘imprisoning parents might cause antisocial behaviour and crime in the next generation’. Acknowledging that their hypothesis must be treated with caution, they note its significance in relation to concerns about the welfare of children. Where the results for the English cohort were compared with a Swedish cohort by Murray *et al.*,¹¹¹ the findings highlight the significance of children’s experiences of financial difficulties, visiting arrangements and stigma. In Sweden, parental imprisonment predicted children’s own criminal behaviour, but unlike in England, the effects of parental imprisonment disappeared after controlling for parental criminality. The explanation proposed by Murray *et al.*¹¹² for this cross-national difference is that the effects of parental imprisonment may have been mitigated by ‘the combination of shorter prison sentences, prison policies that encouraged family contact, the advanced social welfare system, welfare-oriented juvenile justice policies, and sympathetic public attitudes toward criminal offenders’.

The 16 studies in the systematic review by Murray *et al.*¹¹³ showed that children of prisoners are more likely to display antisocial problems compared to other children. However, they explain that it was unclear whether parental imprisonment actually caused these problems and note that imprisonment of an abusive or antisocial parent might actually decrease children’s likelihood of developing behaviour problems because it removes a disruptive and antisocial influence from their lives. Nevertheless, they found that ‘children of prisoners are at greater risk of undesirable outcomes than their peers’¹¹⁴ and draw attention to processes of attachment disruption, strain, reduced quality of care and stigma, which many children of prisoners may experience.

8. Children’s awareness of their parent’s imprisonment

EUROCHIPS¹¹⁵ points to literature on the potential negative impact of inadequate explanations for separation on children with imprisonment parents. The European literature reviewed by EUROCHIPS and studies in Australia,¹¹⁶ and the USA,¹¹⁷ indicate the extent to which children are not aware that their parent is in prison, are given no, or confused, explanations and are lied to with respect to the reasons for parental imprisonment. Noting findings that nearly two-thirds of children in one study did not know their parent was in prison and that only one-third of children are told the truth, EUROCHIPS¹¹⁸ draws upon evidence which demonstrates that children need adequate explanations about the absence of their imprisoned parents. Lying to children about the imprisoned parent’s whereabouts can hinder the child’s development of reasoning capacities, for example. Secrecy, the feeling that something needs to be kept hidden, can also impede the child’s sense of spontaneity with peers.¹¹⁹ Studies highlight the need to address children’s negative feelings, including feeling responsible for their parent’s departure and feelings of guilt. Attention is drawn to studies which

¹¹⁰ Murray, J. and Farrington, D. P. (2005) ‘Parental Imprisonment: Effects on Boys’ Anti-social Behaviour and Delinquency through the Life-Course’ *Journal of Child Psychology and Psychiatry* Vol. 46 No. 12 pp.1269-1278 p. 1277

¹¹¹ Murray, J., Janson, C. and Farrington, D. P. (2007) ‘Crime in adult offspring of prisoners: A cross-national comparison of two longitudinal samples’ *Criminal Justice and Behavior*, Vol.34 No.1 pp.133-149

¹¹² as above pp. 146-7

¹¹³ Murray, J., Farrington, D. P. and Sekol, I. and Olsen, R. (2009) as above

¹¹⁴ as above p. 8

¹¹⁵ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above

¹¹⁶ Tudball, N. (2000) as above

¹¹⁷ Poehlmann, J. (2005) as above

¹¹⁸ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above

¹¹⁹ Bouregba, A. (2007) as above

show that children feel reassured when they know where their parent is, know that they are alive and know why they are in prison. Conversely, Robertson¹²⁰ notes that 'discovering that they have been lied to may lead to distrust or loss of confidence in those around them'.

The potential impact of not providing children with adequate explanations about parental imprisonment is also demonstrated by Poehlmann's research.¹²¹ It found that children were slightly more likely to hold positive representations of carers when they were told about their mother's imprisonment in 'simple, honest, and developmentally appropriate ways'. Whilst she acknowledges that many families feel uncomfortable discussing a mother's imprisonment because of social stigma or because of a young child's apparent confusion about the situation, she points to the negative impact that a lack of open and sensitive communication can have on carer/children relationships:

*Whereas honest, sensitive, and developmentally appropriate communication may affirm children's trust in carers, problematic relationships are more likely to develop when information about the mother's incarceration is hidden, distorted, or presented in manner designed to frighten young children.*¹²²

Van Nijnatten argues that 'the literature is quite straightforward and unanimous about the need for openness towards children. ... The child may be helped by repeated explanation of the reason for the parent's absence. Certainly, children handle such events better once they can understand what happened. Rather than secrecy or protection, the child should be informed and included with the rest of the family in order to share fully in its grief'.¹²³

Drawing upon the literature,¹²⁴ Glover¹²⁵ recognises that parents who keep the family situation hidden from children have their reasons for this, including concerns that their child is too young to understand, will think it is an acceptable outcome or may be bullied. However, she warns against the negative impact on children when parents keep secrets from them and the world, and children then keep secrets from the world. She argues that 'this culture of secrecy within the family' which, as discussed in the following section, may be attributed to stigma associated with having a family member in prison, 'can prevent a child from getting the support they need to cope'.¹²⁶

9. Stigma and social isolation

The literature highlights that prisoners' families and children often experience stigma, discrimination and oppression. Cunningham¹²⁷ aptly describes the link between stigma and isolation, and the difficulties experienced by prisoners' families and children identified in the research literature:

¹²⁰ Robertson, O. (2007) as above p. 10

¹²¹ Poehlmann, J. (2005) as above

¹²² as above p. 693

¹²³ van Nijnatten, C. (1998) *Detention and Development: Perspectives of children of prisoners* Mönchengladbach: Forum Verlag Godesberg p. 93

¹²⁴ Robertson, O. (2007) as above; Marshall (2008) as above

¹²⁵ Glover (2009) as above

¹²⁶ as above p. 8

¹²⁷ Cunningham, A. (2001) 'Forgotten Families - the impacts of imprisonment' *Family Matters No. 59* pp. 36-37

Stigma and feelings of isolation associated with being the family of a prisoner, of being contaminated in some way by the deeds of the offender, is central to many of the difficulties that children and families face. This may also be compounded by community perceptions that prisoner parents are intrinsically bad parents.

Children of imprisoned parents often feel marginalised and socially excluded from their peers and within communities.¹²⁸ Children's concerns are demonstrated by their lack of willingness to let others know about their parent's imprisonment, and their fear of discrimination from peers, teachers and generally within communities. For example, almost two-thirds of carers (65 per cent) in Tudball's¹²⁹ study reported that children did not want friends or a community knowing a parent was in prison and the Social Exclusion Unit¹³⁰ found that children often feel they are treated differently by their teachers once they learn of their family member's imprisonment. Children in Meek's¹³¹ study also revealed a reluctance to disclose information that their sibling was in prison to teachers and peers, due to concerns, including children not wanting their teacher to think they were 'bad' because their sibling was 'bad'. Children with siblings or parents in prison revealed similar concerns in the study by Brown *et al*, as demonstrated by a 14-year-old boy who said, in relation to his stepfather's imprisonment:

*I wouldn't want my teachers to know – it's none of their business, it's private. They might judge me and my dad and they might not understand.*¹³²

Children's reluctance to reveal their situation to teachers is linked to the fear of stigma, and concerns about the lack of confidentiality and unpredictable repercussions.¹³³ Smith *et al*¹³⁴ also found that the significance of stigma lay in the likelihood of being associated with criminality, and that schools and social services were viewed with apprehension. They found reluctance among prisoners' families to disclose the situation to schools, and perceptions of the way in which schools treated the children of prisoners ranged from schools being seen as supportive to judgemental and stigmatising.

Reflecting the findings documented in the wider literature, Smith *et al*¹³⁵ note that the reasons for social isolation experienced by prisoners' families include 'childcare and other caring responsibilities; no friends; lack of transport; paid work (lack of); physical access; financial limitations'. They argue that the specific link between imprisonment and social isolation was clear in their research, for example, where individuals had been excluded by faith groups. The difficulties with respect to isolation are highlighted by their finding that almost half of their respondents (43 per cent) had no one to whom they could turn for help if they had financial problems or if they were ill, and no one to whom they could turn for comfort or support in a serious crisis.

Murray *et al*¹³⁶ draw attention to differences in the stigmatising impact of imprisonment on children and their families across jurisdictions and indicate that children in England

¹²⁸ Nesmith and Ruhland (2008) as above

¹²⁹ Tudball, N. (2000) as above

¹³⁰ Social Exclusion Unit (SEU) (2002) as above

¹³¹ Meek, R. (2008) 'Experiences of Younger Siblings of Young Men in Prison' *Children & Society* Vol. 22 No. 4 p. 271

¹³² Brown, K., Dibb, L., Shenton, F. and Elson, N. (2001) as above

¹³³ as above; Boswell, G. (2002) as above; Chui, W. (2010) as above; Meek, R. (2006) *When big brother goes inside: The experiences of younger siblings of young men in prison* London: The Howard League for Penal Reform

¹³⁴ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above

¹³⁵ as above p. 33

¹³⁶ Murray, J., Janson, C. and Farrington, D. P. (2007) as above

may have been more likely to be arrested, prosecuted, or convicted based on having criminal parents, than was the case in Sweden. They also note that imprisonment might also have been associated with less social stigma in Sweden because, in respecting their right to privacy, the identity of Swedish offenders was almost never revealed in media accounts of trials and convictions. Such regional differences further indicate how the wider socio-economic, political and cultural contexts within which children of imprisoned parents live, in addition to criminal justice practices, may exacerbate problems for children of imprisoned parents.

10. Visiting prisons

Although some studies suggest a direct correlation between increased contact with an imprisoned parent and enhanced coping skills on the part of the child¹³⁷ and the importance of maintaining ties between children and imprisoned parents is recognised,¹³⁸ many children reveal mixed feelings about visiting prisons. Common concerns they raise relate to the prison environment and the quality of facilities available, including insufficient and inadequate spaces to play, and unfriendly child visiting areas.¹³⁹ Additional concerns raised by research include transport difficulties and restrictions imposed by visiting and phone regulations.¹⁴⁰ Drawing on the international literature, Rosenberg¹⁴¹ summarises the many factors which limit visits, including:

[G]eographic distance, transportation and financial barriers, the lack of child-friendly visiting contexts, harsh and disrespectful treatment by correctional officers and generally the demanding nature of visits on the time and emotions of children and parents.

Tudball¹⁴² also reported that visiting was a particular concern for carers due to these issues, and Chui,¹⁴³ for example, notes that children reported feeling intimidated by the prison and were discouraged by short visiting times. The curtailed length of visits was also raised by HM Inspectorates of Prisons and Probation in the UK, respectively.¹⁴⁴ In addition to inefficient booking systems for visits, visits confined to the daytime and difficulties experienced by prisoners in accessing telephones, phone cards or money and being unable to phone mobiles. An additional problem experienced by children visiting imprisoned parents, as indicated by Arditti and Few,¹⁴⁵ includes long waits for children before they see their parent.

Children may also experience difficulties visiting parents in prison if there is no one to bring them to the prison or their carer does not want the child to visit.¹⁴⁶ Visits may also be hampered by distance, especially if parents are imprisoned in a different jurisdiction.

¹³⁷ See, for example, Murray, J. (2005) 'The effects of imprisonment on families and children of prisoners' in Liebling, A. & Maruna, S. (eds.) *The effects of imprisonment*, pp.454-5; and Sack, W.H. and Seidler, J. (1978) 'Should children visit their parents in prison?' *Law and Human Behaviour*, Vol. 2

¹³⁸ Kaminiski, D. and Reman, P. (2007) *Enfants de Parents Détenus* Brussels: Fonds Houtman (ONE)

¹³⁹ Boswell, G. (2002) as above; Chui, W. (2010) as above; Nesmith and Ruhland (2008) as above

¹⁴⁰ Nesmith and Ruhland (2008) as above; Tudball, N. (2000) as above

¹⁴¹ Rosenberg, J. (2009) as above

¹⁴² Tudball, N. (2000) as above

¹⁴³ Chui, W. (2010) as above

¹⁴⁴ HM Inspectorate of Prisons and HM Inspectorate of Probation (2001) as above

¹⁴⁵ Arditti, J. and Few, A. (2006) as above

¹⁴⁶ Rosenberg, J. (2009) as above

Hall's¹⁴⁷ study revealed that children could find visits stressful, especially if the prisoner was not held in a nearby prison:

With both my parents in an English jail I didn't get to see them that often. And it was very expensive to go over there. I know some families went all the way to the jail only to find that the prisoners had been moved to another jail. Our family life was really messed about a lot.

Recognising that prison visits can be a source of anxiety for children, EUROCHIPS¹⁴⁸ raises concern about the distress imprisoned parents may inflict on visiting children, for example, where they use the child to obtain information about their partner. It notes that the consequences of conflict between parents may leave children feeling torn and withdrawn. Whilst visiting conditions vary in different parts of Europe, an additional concern raised by Smith *et al*,¹⁴⁹ in their UK based study, is the impact that search procedures may have on visiting. They report on the difficulty a prisoner's relative experienced due to fears of culturally unacceptable search procedures. This issue is also documented by HM Inspectorates of Prisons and Probation in the UK, respectively,¹⁵⁰ who note that prisoners particularly from ethnic minorities did not wish their families to be subjected to searches by prison staff in order to receive a visit. A 14-year-old girl in the study by Brown *et al*¹⁵¹ described how being watched, searched and having to wait to visit her brother made her feel:

It makes you feel horrible, like you have done something too. They watch you and make you feel guilty just for being there. They search you and make you take your shoes off, and you feel stupid and it is horrible. You don't get used to it. You sit there waiting for them to call you. And waiting to be searched, and give them your lighter and things. And you feel ashamed.

11. Conclusion

It is widely recognised that children of imprisoned parents, and siblings and families of prisoners, may experience multiple, complex and inter-related problems. However, despite the unique vulnerabilities of children with imprisoned parents, they are often overlooked as comprising a group in its own right with special needs. It is argued that they require political recognition, research attention and there is a need for criminal justice and wider health, education and social care policies and practices to address the serious and wide-ranging implications of parental imprisonment. To facilitate focused support and services, joined-up service provision by state agents, including health, welfare, education and criminal justice providers is required. The literature recognises that state agents need to enhance their information sharing practices, knowledge about the needs of children of prisoners and training.

Children of prisoners and their families often experience problems from arrest, through to sentencing, imprisonment and release, and these are often compounded further by their experiences of severe social exclusion prior to parental imprisonment, including deprivation, poverty and educational disadvantage. Parental imprisonment can have a profound and long-lasting impact on children of prisoners and their families. The consequences for children may be emotional, physical and developmental, whereby they may experience the consequences of the impact of imprisonment on family and

¹⁴⁷ Hall, M. (2000) as above

¹⁴⁸ Ayre, L., Philbrick, K. and Reiss, M. (2006) as above

¹⁴⁹ Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (2003) as above

¹⁵⁰ HM Inspectorate of Prisons and HM Inspectorate of Probation (2001) as above

¹⁵¹ Brown, K., Dibb, L., Shenton, F. and Elson, N. (2001) as above

community relationships, income and material goods, health, education and leisure, and stigma and victimisation. The stress experienced by children is demonstrated by the multiple emotional and behavioural reactions of the majority of children to parental imprisonment. The literature reveals that the common reactions include sadness, confusion, depression, worry, anger, aggression, fear, developmental regressions, such as bed-wetting, sleep problems, eating disorders and hyperactivity.

Children's experiences of such problems as a consequence of parental imprisonment, witnessing a parent's arrest, stigma, disruptions to family and school life, care and relationships, financial difficulties, housing and education problems or upheavals, a reduction in material goods and leisure time and of prison visits, starkly bring in to question the processes of arrest, trial, sentencing, imprisonment and release, and highlight the need for further knowledge about how best to alleviate the multiple and complex problems to which children of prisoners are particularly susceptible.

Chapter 3: The human rights framework

By Stephanie Lagoutte

1. Introduction

When separated from their parents, children have the right to maintain regular contact with them. This right is not absolute and may conflict with other concerns but, in any case, the best interests of the child must be the primary concern when making decisions that concern the child.¹

The United Nations Convention on the Rights of the Child (CRC) from 1989 is the most ratified human rights instrument in the world.² This can be seen as the measure of the high level of consensus among states on the necessity to protect the specific needs and rights of children. However, in practice, the fate of children is usually linked to the fate of their parents. This reality is acknowledged by various human rights instruments – general and specific, which protect the family and the right to respect for family life of both parents and children, even when separated from each other by divorce, migration or detention.³

This chapter shows that when children and parents are separated because of the detention of one or both parents, the public authorities have a number of obligations towards the imprisoned parents and their children. The central human right in this situation is the right of the child to frequent and regular contact with his or her parents.⁴ Seen from a legal human rights perspective this right is more visible in the form of the right to respect for family life of the prisoner; it implies a right to have contact with their children during detention, under certain conditions. Indeed, the perspective of the protection of the family life of prisoners is central to our situation; however, this chapter will show that international human rights instruments also call for an enhanced focus on the perspective of the child.

1.1 Methodology

The chapter is an analysis of the human rights framework that is relevant for the countries of the studies (and for EU countries at large).⁵ It includes a study of international and regional legally binding instruments (the International Covenant on Civil and Political Rights (ICCPR) and the CRC),⁶ as well as the jurisprudence from the

¹ UN Convention on the Rights of the Child, Article 3(1). See below at pt. 2.1

² 193 States parties to the CRC. UNICEF talks about a 'near universal' ratification of the Convention on the Rights of the Child, see: http://www.unicef.org/crc/index_protecting.html. All case study countries involved in the project have ratified the CRC

³ See a.o. UN International Covenant on Civil and Political Rights, Article 23; European Convention on Human Rights, Article 8; CRC, Article 9. See also below at pt. 3. The CRC refers to the duties of parents towards their children (Articles 3.2, 5 and 14)

⁴ CRC, Article 9.3

⁵ Peter Scharff Smith and Janne Jakobsen have made an analysis of the issues concerning children of imprisoned parents and their rights in theory and in practice; their book is in Danish, but soon to be published in English: Scharff Smith, P. and Jakobsen, J. (2010) Når straffen rammer uskyldige. Børn af fængslede i Danmark. Copenhagen: Gyldendal

⁶ As far as the CRC is concerned, state parties commit themselves to implement the Convention. The state must present a report on implementation of the Convention to the Committee on the Rights of the Child every five years (often supplemented with shadow reports by NGOs). The Committee reviews the report and formulates observations on the situation in the country. At national level, the situation can vary from one country to

European Court of Human Rights. The European Convention on Human Rights (ECHR) plays a central role in this chapter, as the rights that it protects are justiciable before both domestic courts and the European Court of Human Rights, the judgments of which are legally binding.⁷ The chapter also points at shortcomings in the case law of the European Court of Human Rights and argues for a change in the perspective of the court when dealing with situations involving children of imprisoned parents.

The chapter also incorporates soft law instruments such as recommendations and resolutions from the Parliamentary Assembly or the Committee of Ministers of the Council of Europe⁸, or reports from special UN or Council of Europe monitoring bodies. It has to be understood that even if soft law instruments are not legally binding as international treaties are, they are signed by states and are engagements of states to make efforts to comply with the provisions that they contain. In addition, soft law instruments can be used by the European Court of Human Rights (ECtHR) when it defines international obligations of states under the Convention: the Court frequently invokes soft law instruments and reports,⁹ as well as other international human rights instruments (for example, CRC, Hague Convention on Child Abduction).¹⁰

Overall, when dealing with such a variety of international instruments, it is paramount to identify which rights are at stake and whose rights they protect, as well as to clarify who owns an actual claim on the basis of these instruments and whether a remedy is actually accessible.

1.2 Presentation of the chapter

This chapter seeks to present an exhaustive picture of the human rights framework that is relevant to children of imprisoned parents; the chapter is also a critical analysis of some of the standards in place. It shows that given the specific situation of children and the shortcomings of the actual legal practice in the field, it is paramount to the protection of their human rights to shift the focus and place children at the centre of public authorities' concerns. Hence, the chapter is structured as follows:

- the main principles contained in the Convention on the Rights of the Child: protection of the best interests of the child, right of the child to be heard in all matters that concern him or her (2);
- the human rights at stake: right to be informed of the whereabouts of all persons concerned, right to frequent contact and obligation of the state to assist the children and their parents (3);
- the case of babies staying in prison with their mother (4);
- legal analysis of the case law of the ECtHR concerning visits (5);

another even though the Committee insists on the fact that the CRC must be made directly applicable in domestic law, see for example: Concluding Observations on Denmark, 2005 CRC/C/DNK/CO/3

⁷ The status of the ECHR is a bit different in the United Kingdom and Denmark (where the ECHR has been incorporated through an incorporation law, for example, the Human Rights Act of 1998) and in France, Italy and Poland where the Convention is directly applicable. It must be mentioned that the implementation of the judgements of the ECtHR is posing increasing problems, re. this issue see: See report from Open Society Foundations: From Judgment to Justice: Implementing International and Regional Human Rights Decisions, November 2010

⁸ Council of Europe (2009) Penitentiary questions: Council of Europe conventions, recommendations and resolutions, Strasbourg: Council of Europe

⁹ See a.o. *Orchowski v Poland*, judgement of 22 October 2009 (app. no. 17885/04), §131

¹⁰ See: Leach, P. (2005 2nd edition) *Taking a Case to the European Court of Human Rights* Oxford: Oxford University Press, pp172-173 and footnotes 53-55

- the actual perspective of the child in this context and the way forward to enhance it (6).

2. The Convention on the Rights of the Child: General principles

The need to extend particular care to the child has been stated many times in international human rights instruments. According to Article 24 of ICCPR:

*Every child shall have the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.*¹¹

The Convention on the Rights of the Child (CRC)¹² is the specific instrument that was adopted in order to secure specific children's rights as well as formulate more general rights in a way which took children's situations into account. Indeed, the CRC states that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'.¹³

The CRC compels states to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights that it recognises. As far as economic, social and cultural rights, the CRC is less compelling in the way that states must undertake such measures to the maximum extent of their available resources.¹⁴ In order to monitor states' compliance with the CRC, states must present a report on implementation of the Convention to the Committee on the Rights of the Child every five years (often supplemented with a shadow reports by NGOs). The Committee reviews the report and formulates observations on the situation in the country. At domestic level, the legal status of the CRC varies from one country to another, even though the Committee insists on the fact that the CRC must be made directly applicable in domestic law.¹⁵

The CRC contains a number of principles and rights that are directly relevant to children of imprisoned parents.

¹¹ International Covenant on Civil and Political Rights, article 24. See also: Geneva Declaration of the Rights of the Child of 1924; Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959; Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (Article 23); International Covenant on Economic, Social and Cultural Rights (Article 10) as well as the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children. UNICEF, created in 1946 is the driving force that helps build a world where the rights of every child are realised. <http://www.unicef.org/index.php>

¹² Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990

¹³ Preamble of the CRC

¹⁴ CRC, Article 4

¹⁵ See for example in the case of Denmark, where the CRC is not incorporated in Danish legal order: Committee on the Rights of the Child, Concluding Observations on Denmark, 2005 CRC/C/DNK/CO/3. On the contrary in Poland, the CRC is directly enforceable according to Article 91 of the 1997 Constitution and forms part of the legal system (part of the sources of the law domestically); it is therefore directly justiciable, that is, points based on UNCRC can be argued directly in the courts. The Constitutional Court in Poland, for instance, can examine the law and practice's compatibility with the UNCRC directly, therefore providing judicial scrutiny of the implementation of the Convention. This is discussed further in chapter 7 on the Polish case study of this research

2.1 Protection of the best interests of the child

The protection of the best interests of the child is the universal principle guiding the protection of all matters concerning the rights and the welfare of a child. It is linked to perceptions of the particular nature of childhood and children, as well as attitudes towards children that can vary notably from one part of the world to the other.¹⁶

Article 3(1) of the CRC reads as follows:

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.

The content of the principle of the best interests of the child has not been precisely defined; rather, the principle requires states to undertake active measures that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests.¹⁷ Nevertheless, guidance on the substantial and objective elements of the principle can be found in the contents of the CRC itself; for example, the right of the child to the enjoyment of the highest attainable standard of health, provision for and protection of the child's physical integrity, or the right of the child to education.

There is a dialectic relation between the principle of the best interest of the child and the substantive rights protected in the CRC. The provision concerning the separation between children and parents¹⁸ provides as a principle that children must not be separated from their parents. When separation is inevitable (in order to protect the best interests of the child), children have a right to frequent, direct contact with the parent(s) from whom they are separated, unless it is detrimental to the protection of their best interests.¹⁹

The Committee on the Rights of the Child has indicated that the best interests of the child of a defendant or an imprisoned parent must be considered carefully and independently 'by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child'.²⁰ The Committee has not mentioned the taking into consideration of the best interests of the child in decisions concerning visits to the imprisoned parents (frequency of visits, conditions under which the visits take place, etc). However, it recommends that states ensure that, when children are placed in

¹⁶ Alston, P. and Gilmour-Walsh, B. (1996) *The Best interests of the Child. Towards a Synthesis of Children's Rights and Cultural Values*. UNICEF/ Innocenti Studies, pp17-23 and Breen, C. (2002) *The Standard of the Best Interest of the Child. A Western tradition in International and Comparative Law*. The Hague: Martinus Nijhoff Publishers

¹⁷ Committee on the Rights of the Child, General Comment No. 5, General Measures of Implementation, 2003, § 12. See also the discussion on the meaning and content of article 3 in Freeman, M. 'Article 3. The Best Interest of the Child', in: Alen, A., Vande Lanotte, J., Verhellen, E.; Ang, F.; Berghmans, E and Verheyde, M: *A Commentary on the United Nations Convention on the Rights of the Child*, Leiden/Boston: Martinus Nijhoff Publishers, pp. 25-63, especially at pp. 44-47

¹⁸ CRC, Article 9.1

¹⁹ CRC, Article 9.3.

²⁰ Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Thailand, 17 March 2006, CRC/C/THA/CO/2, § 48

alternative care while their mother is detained, alternative care allows the child to maintain personal and direct contact with the imprisoned mother.²¹

2.2 The right of the child to express his or her view and to be heard in matters affecting the child

The Committee on the Rights of the Child has been more specific concerning the right of the child to express his or her view and to be heard in matters affecting the child. According to Article 12(1):

[T]he child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. [This right concerns] any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

According to the Committee on the Rights of the Child, the words 'in all matters affecting the child' imply that 'the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly'.²²

The Committee recalls that:

The Open-ended Working Group established by the Commission on Human Rights, which drafted the text of the Convention, rejected a proposal to define these matters by a list limiting the consideration of a child's or children's views. Instead, it was decided that the right of the child to be heard should refer to "all matters affecting the child".²³

The Committee then adds:

[C]hildren are often denied the right to be heard, even though it is obvious that the matter under consideration is affecting them and they are capable of expressing their own views with regard to this matter. While the Committee supports a broad definition of "matters", which also covers issues not explicitly mentioned in the Convention, it recognizes the clause "affecting the child", which was added in order to clarify that no general political mandate was intended.²⁴

It seems obvious that matters concerning transfer of an imprisoned parent or disciplinary sanctions reducing number of visits do affect the children concerned; there is however no interpretation from the Committee on the Rights of the Child on those specific issues.

As far as the right to be heard in any judicial and administrative proceedings affecting him or her is concerned, the Committee has explained that:

... this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other

²¹ as above. See also section 5.2.1 of this chapter

²² GC General Comment no. 12 (2009) The right of the child to be heard (CRC/C/GC/12), § 26

²³ as above

²⁴ as above

*emergencies. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection.*²⁵

This list of situations gives an indication that the child has to be at the centre of the decision-making procedure at stake. Decisions on sanctions, imprisonment and conditions of detention of parents do not appear from the outset to belong in this category. However, the Committee also mentions that the right to be heard applies both to proceedings which are initiated by the child, as well as to those initiated by others which affect the child. Here, the Committee refers to parental separation or adoption, as examples. In both cases, the Committee encourages states to 'introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child'.²⁶

2.3 Non-discrimination principle

The CRC contains a non-discrimination provision, which states:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

*2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*²⁷

In the context of children of imprisoned parents, this implies that children must not be discriminated in the exercise of their rights because of the activities of their parents. There is to date no indication of how the non-discrimination principle may be received by domestic courts or the Committee as an element to substantiate claims of children of imprisoned parents.²⁸

These three main principles contained in the CRC constitute the general human rights framework of children of imprisoned parents. It is, however, difficult to evaluate their possible legal impact on the situation of the children as the Committee on the rights of the child only has made sparse comments on the topic. In fact, most legal discussions on the family life of imprisoned parents and their children are taken within the realm of the prisoner's right to respect for family life. Under this realm, however, a number of human rights standards are relevant to the situation of the children of imprisoned parents.

²⁵ as above, § 32

²⁶ as above § 33

²⁷ CRC, Article 2

²⁸ For a broad study of the principle of non-discrimination see: Besson, S. (2005) The Principle of Non-Discrimination in the Convention on the Rights of the Child, *The International Journal of Children's Rights*, Vol. 13, pp.433-461

3. The protection of the family life of prisoners and their family in international and European human rights instruments

The international and regional (here European) human rights framework is paramount to the situation of children and their imprisoned parents. A number of instruments protect various aspects of the family life of prisoners.

General human rights instruments which protect family life:²⁹

- Universal Declaration of Human Rights (UDHR), Articles 10 and 23;
- European Convention on Human Rights (ECHR), Article 8;
- International Covenant on Civil and Political Rights (ICCPR), Article 23;
- International Covenant on Economic, Social and Cultural rights (ICESCR), Article 10;
- Convention on the Rights of the Child (CRC), Article 9;
- EU Charter on Fundamental Rights, Article 24.3.

Specific human rights instruments concerning the treatment of prisoners:³⁰

- UN Standard Minimum Rules for the Treatment of Prisoners, 1977;³¹
- United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988;³²
- European Prison Rules, 2006;³³
- Resolution of the Parliamentary Assembly of the Council of Europe on Women in prison, 2009.³⁴

²⁹ Lagoutte, S. and Árnason, Á. T. (1999) 'Article 16', Alfredsson, G. and Eide, A. (eds.) *The Universal Declaration of Human Rights. A Common Standard of Achievement* The Hague: Martinus Nijhoff Publishers pp. 325-357

³⁰ Murdoch, J. (2006) *The treatment of prisoners. European standards*, Council of Europe Publishing, Council of Europe (2009) Penitentiary questions: Council of Europe conventions, recommendations and resolutions, Strasbourg: Council of Europe

³¹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

³² UN General Assembly, December 1988, A/RES/43/173

³³ Recommendation of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules, Rec (2006)2. The European Prison Charter that the Parliamentary Assembly mentions in some of its document is not an actual charter; there is a recommendation to make a Charter by the Parliamentary Assembly of the Council of Europe [Parliamentary Assembly Recommendation 1747 (2006)]. However the Committee of Ministers of the Council of Europe [see Doc. 11041 of 2 October 2006 – reply from the Committee of Ministers] has not followed up on this recommendation as it considers that regularly updated European Prison Rules play the same role

³⁴ Resolution 1663 (2009) of the Parliamentary Assembly of the Council of Europe on Women in prison, 28 April 2009 (See also: Women in prison, Report of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 11619 revised, 23 June 2008). The situation of women is seen as presenting additional challenges as far as the effects of imprisonment on family life are concerned. As women are often primary carers for their children, their imprisonment has disastrous effects on their and their children's family life. This document insists specifically on the situation of women detained on remand and recommends restrictions on visits in places of detention be as flexible as possible (See Council of Europe Resolution on Women in prison, pt.7)

3.1 The right to respect for family life³⁵

According to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, the family is entitled to protection by society and the state.³⁶ In addition, the state may not interfere in an individual's private and family life.³⁷ This imposes on states both the positive obligation to protect family life, and the negative obligation to avoid unjustified interference in family life. However, interferences in an individual's family life is possible in some cases: the interference must be 1) prescribed by law and 2) necessary to protect a certain number of interests (national security, public safety, prevention of disorder or crime) as well as the rights of other persons.³⁸

Human rights protection must be afforded by the state to anyone within its jurisdiction.³⁹ The ECtHR has in many instances made clear that prisoners' rights are protected by the ECHR.⁴⁰ The European Prison Rules 2006 specify that:

*Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.*⁴¹

The detention of the parent is one of the situations where, as the consequence of detention, children and parents are separated from each other. In this case, however, parents and children maintain a right to keep in contact with each other through the prisoner's right to family life. According to the ECtHR:

*Detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. (...) However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family.*⁴²

This view is concurring with all standards on the treatment of prisoners.⁴³ Hence, the right to keep contact with family members, including children is threefold. It includes a right to be informed of the whereabouts of each other (in order to establish contact), a right to communicate with each other, and a right of prisoners to receive visits. In

³⁵ For a study of the prisoners' right to family life, see: Van Zyl Smit, D. and Snacken, S. (2009) *Principles of European Prison Law and Policy. Penology and Human Rights*. Oxford: Oxford University Press. pp. 228-247

³⁶ UDHR, Art. 16, ICCPR, Art. 23, ICESCR, Art. 10.1. The ICESCR specifies that 'Special protection should be accorded to mothers during a reasonable period before and after childbirth' (ICESCR, Art. 10.2)

³⁷ UDHR, Art. 12; European Convention on Human Rights, Art. 8

³⁸ See, for example, ECHR Article 8, par.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

³⁹ See for instance, ECHR, Article 1; ICCPR, Article 2.1

⁴⁰ See for instance: *Ilascu and Others v Moldova and Russia*, judgment of 8 July 2004 (app. no. 48787/99).

⁴¹ European Prison Rules 2006, Rule 2

⁴² *Moiseyev v Russia*, judgment of 9 October 2008 [Section I] (app. no. 62936/00), § 246. The judgment concerns restrictions on family visits by wife and minor daughter to a remand prisoner (violation). See also, *Messina v Italy* (No.2), 28 September 2000 (app. no. 25498/94), § 61. As explained earlier by the former European Commission of Human Rights: "The Commission considers that it is particularly important for prisoners to keep and develop family ties in order to be able better to cope with life in prison and prepare for their return to the community", see: *E.L.H. and P.B.H. v United Kingdom*, Commission decision of 22 October 1997 (app. no. 32094/96 and app. no. 32568/96)

⁴³ UN Standard minimum rules for the treatment of prisoners (1977), Rule no. 37; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principle 19; European Prison Rules (2006), Rule 24; Resolution of the Parliamentary Assembly of the Council of Europe on Women in prison (2009), pt. 12

addition, it imposes positive obligations on the state such as the obligation to offer legal guarantees when decisions are made by public authorities on contacts or the obligation for relevant public authorities to assist parents and children to maintain ties during the period of detention.⁴⁴ It must be added here that interference with parental rights can only be justified in an exceptional case: an automatic ban on exercising parental rights for prisoners is therefore deemed unacceptable by the ECtHR.⁴⁵

A number of specific issues must be examined more closely:

- the arrest of the parent (3.2);
- the right to be informed of the whereabouts of all persons concerned (3.3);
- the right to frequent and regular contact (3.4);
- the case-law of the European Court of Human Rights on restrictions on visits (3.5);
- the obligation of the state to assist the persons concerned in maintaining family life (3.6).

3.2. The arrest of the parents

There is no specific human rights standard that applies to the situation of parents and children at the moment of arrest. However, an arrest that takes place with display of use of force can amount to an interference with the child's right to respect for private and family life, as held by the European Commission in 1992:

*The Commission finds that ... the use of force against a mother in the presence of her minor child amounts to a negative experience with considerable repercussions on the child's state of mind. The Commission, having regard to the second applicant's uncontested statement that she watched major parts of her mother's forcible arrest and noting that she considerably suffered from what she had seen, finds that there was also an interference with the second applicant's right to respect for private life.*⁴⁶

Building on its finding of a violation of Article 3 concerning the use of force against the mother, the Commission finds a violation of Article 8 as far as the daughter is concerned.⁴⁷ If one follows the line of thought of the Commission, this case shows that it takes quite a high level of unnecessary display of force, amounting to violation of Article 3, in order to consider the whole arrest as a possible violation of the child's right to private and family life. However, the Court found later that the facts in the present case were actually not established and concluded that there was no violation of Articles 3 and 8 in the case in relation to both the mother and the child.⁴⁸

In addition, the general duty for the state to ensure the child protection and care according to CRC Articles 3.1 and 3.2 come in to play in situations where the police arrest a single parent and removes her or him from a home where children are living. There is no doubt here that the police, in cooperation with social services, have a duty to find a solution in order for the children not to be left unattended.

⁴⁴ See further sections 3.3 to 3.6 of this chapter

⁴⁵ Murdoch, J. (2006) as above pp. 244-245

⁴⁶ Klaas v Germany Commission report of 21 May 1992, annexed to Klaas judgement, Series A.269, § 117.

⁴⁷ as above, § 119

⁴⁸ Klaas v Germany, judgement of 22 September 1993 (appl. no. 15473/89)

3.3. Right to be informed of the whereabouts of all persons concerned

The international standards on prisoners are very unambiguous concerning the entitlement of a prisoner to inform his family of his whereabouts:

Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.⁴⁹

However, this principle is subject to restrictions as far as the delay allowed to notify the arrest or detention to the family:

Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.⁵⁰

The European Commission of Human Rights has dealt with contacts between prisoners and the outside world in a case concerning contacts between some applicants and their wives during their detention in police custody:

'The unexplained disappearance of a family member even for a short period of time may provoke great anxiety'. Therefore the absence of means to communicate their whereabouts to their spouses constitutes an interference with the applicants' right to respect for their private and family life. However, the Commission also recognizes that in certain circumstances the existence of risks linked to national security, prevention of crime and so on may justify "refusing for a time an arrestee to contact the outside world". However, the Commission is of the opinion that unless there are specific reasons relating to the danger that accomplices will be alerted, it cannot be necessary under article 8, paragraph 2, to deny an arrestee the possibility of notifying his family of his whereabouts.⁵¹

It must be, however, emphasised that this right concerns the possibility for the prisoner to communicate with the outside world. Seen from the perspective of the child, the CRC stipulates that in the case of the detention or imprisonment of one or both parents, or of the child:

State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.⁵²

Hence, the state has a dual obligation:

- First, the children of imprisoned parents and the person(s) taking care of them (parent or not) must be able to receive information about the

⁴⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN General Assembly, December 1988, A/RES/43/173), Principle 16.1

⁵⁰ as above, Principle 16.4

⁵¹ Report of the European Commission for human rights in the case of *McVeigh and others v United Kingdom* (appl. nr. 8022/77, 8025/77 and 8027/77), DR 25, pp. 67-68

⁵² CRC, Article 9.4

whereabouts of the detained parent (also when the parent is transferred from one prison to another).⁵³

- Second, the prisoner must be informed of the situation of his or her children, especially when the children are taken in to care by the social services.

Clearly, the right to be provided with information about an imprisoned parent is not absolute as the relevant authorities must ensure that the provision of information will not entail adverse consequences for the persons concerned: best interests of the child, but probably also, to some extent, the wish of the detained parent that his or her whereabouts are not communicated to the children.⁵⁴

This raises the unsolved question of the extent to which the authorities are obliged to give information to relatives and especially to children of imprisoned parents on the whereabouts of the parent – and, more generally, on what is going on with the parent who has been arrested. Here, it seems that the protection of the best interests of the child should be the primary concern of the authority when deciding, or not, to pass information on a prisoner to his family. Such a decision should take a number of elements in to consideration: the age of the child, his or her family situation, and the wish of both the imprisoned parent and the parent outside, if any.

To fulfil the obligation to inform on the whereabouts of all the persons concerned by the detention of one or both parents, the state has also the obligation to register the family situation of prisoners, unless prisoners themselves have a reason to refuse to be put in contact with their children. This is supported by a recent resolution of the Parliamentary Assembly of the Council of Europe that calls on states to:

*[R]ecord the number, ages and location of the prisoner's children and the children's carer immediately upon arrival of the prisoner at the prison (regardless of whether the prisoner is male or female) and make such information publicly available.*⁵⁵

Concerning the specific case of imprisoned mothers, the resolution adds that states must also:

*[E]nsure that, where mothers are imprisoned, the state authorities are obliged to inform them of the whereabouts of their children and reassure them that their children are receiving suitable care and that they will be able to be reunited with them on release.*⁵⁶

The resolution adds that this obligation imposed on the state might result in more women registering their children⁵⁷ – in cases where there is no other way for the state to get the information than by asking the women about their family situation.

3.4 Right to frequent and regular contact

Children and their imprisoned parent(s) have a right to frequent and regular contacts with each other.

⁵³ See on the issue of the transfer of a prisoner without informing his family: *S. v United Kingdom*, European Commission on Human Rights' decision of 13 March 1984 (app. no. 9466/81) and Commission's report of 15 May 1986 (friendly settlement). See also European Commission on Human Rights' report of 18 March 1981 in the case of *McVeigh and others v United Kingdom* (appl. nr. 8022/77, 8025/77 and 8027/77), DR 25, p. 97

⁵⁴ The Northern Ireland case study raises the issue of parents who for various reasons may wish to keep their detention private from their family

⁵⁵ Parliamentary Assembly of the Council of Europe's Resolution 1663(2009) of 28 April 2009 on Women in Prison at pt. 8.3

⁵⁶ as above pt. 9.2

⁵⁷ as above

According to Article 9.3 of the CRC:

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.

The Charter on Fundamental Rights of the European Union includes and protects the same right:

Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his and her parents, unless that is contrary to his or her interests.⁵⁸

Even if prisoners have a right to have contact with their family, it is unequivocal that communication with, and visits from, the family may be subjected to restrictions and monitoring, when 'necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime'.⁵⁹ It is however understood that 'such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact'.⁶⁰

3.5 Legal analysis of the case law of the European Court of Human Rights concerning visits (limitation on visits, supervision of visits and practical organisation of visits)

Most cases from the ECtHR, that concern family life of prisoners also concern restrictions on visits.

There is no doubt that prisoners have a right to receive visits in prison. Even when imprisoned in high security facilities, they retain this right. However, this right is not absolute. According to the ECtHR:

Such restrictions as limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements constitutes an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. Nevertheless, any restriction of that kind must be applied 'in accordance with the law', must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being 'necessary in a democratic society'.⁶¹

The cases before the Court concern the following issues: refusal of family visits during a period of time – mostly wives,⁶² but also a wife and children;⁶³ limitation of frequency and duration of visits and conditions under which the visits are taking place (mostly glass partition);⁶⁴ proximity of the prison to the domicile of the children.⁶⁵

⁵⁸ Article 24.3, Charter of Fundamental Rights of the European Union, 7 December 2000 (2000/C 364/01)

⁵⁹ European Prison Rules, 2006 (Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules), Rule 24.2

⁶⁰ as above

⁶¹ See, *Moiseyev v Russia*, cited above, § 246 and a.o. *Estrikh v Latvia*, Judgment of 18 January 2007 [Section II] (app. no. 73819/01), § 166; *Kučera v Slovakia*, judgment of 17 July 2007 [Section IV] (Application no. 48666/99), § 127

⁶² *Ferla v Poland*, judgment of 20 May 2008 [Section IV] (app. no. 55470/00); *Kučera v Slovakia*, cited above; *Ciorap v Moldova*, judgment of 19 June 2007 [Section IV] (Application no. 12066/02); *Klamecki v Poland* (no. 2), judgment of 3 April 2003 (app. no. 31583/96) [Section I]

⁶³ *Moiseyev v Russia*, as above

⁶⁴ as above

Most cases concern the restrictions on visits to prisoners on remand⁶⁶ and/or prisoners in high security institutions.⁶⁷ There are very few cases that concern the restriction or prohibition of visits from a spouse and child to a sentenced prisoner.⁶⁸ It must also be noted that a lot of cases concern the 'quality of the law' that restrict the visits, that is, the absence of a legal basis for the restriction on the visits (no legal provisions at all)⁶⁹ or the unforeseeability of the law (the law exists but its provisions are unclear or the criteria to limit the visits are too broad or too fuzzy);⁷⁰ these cases do not deal with the substantial matter of the case.

When dealing with the restriction, prohibition or the reduction of visits to a prisoner, the Court has to balance various interests: on the one hand, the right to respect for family life of the prisoner and his family and, on the other hand, public interest linked to the crime with which the prisoner is charged or has been found guilty. In this respect, the interests examined by the Court are determined by the type of cases the Court has received and the way the cases have been argued before the Court. Other interests could be at stake in other types of cases, but have not yet been dealt with by the Court.

3.5.1 *Public interests at stake*

The following public interests can be listed. They can overlap each other.

- Risk of collusion: concerning prisoners on remand, the interest of the ongoing investigation of the case can outweigh the right to respect for the family life of the prisoner and his family. The most common ground here is the risk of collusion with the prisoner's wife: in cases where the wife is a witness or co-accused in criminal proceedings against a remand prisoner, there is a risk of collusive action or other obstruction to the process of collecting evidence.⁷¹
- Fight against Mafia crimes: special regimes for Mafia prisoners have been dealt with by the Court in a number of Italian cases. The Court accepted rather severe restrictions on family visits because of the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities. The Court took in to account 'the specific nature of the phenomenon of Mafia-type organised crime, in which family relations often play a crucial role'. In this respect, the Court accepts that a special regime of visits can be 'instrumental in curtailing the contacts of imprisoned Mafia members with the outside world and preventing them from organising and procuring the commission of crimes both inside and outside their prisons'.⁷²

⁶⁵ See decisions from the former European Commission of Human Rights: *Ismail Hacısüleymanoglu v Italy*, Commission decision of 20 October 1994 (appl. no. 23241/94); *Ouinan v France*, Commission decision of 12 March 1990 (app. no. 13756/88), DR 65/265

⁶⁶ *Moiseyev v Russia*, cited above; *Ferla v Poland*, as above; *Kucera v Slovakia*, cited above; *Ciorap v Moldova*, as above; *Klamecki v Poland*, as above. See also: *Baginski v Poland*, judgment of 11 October 2005 [Section IV] (app. no. 37444/97)

⁶⁷ *Lorsé and others v the Netherlands*, judgment of 4 February 2003 (app. no. 52750/99); *Messina v Italy* (No.2), 28 September 2000, app. no. 25498/94; *Indelicato v Italy*, decision of 6 July 2000 (app. no. 31143/96) – the 2 Italian cases concern persons convicted for Mafia type crimes and therefore submitted to high security prison regimes

⁶⁸ See for example, *Lavents v Latvia*, judgment of 28 November 2002 (app. no. 58442/00)

⁶⁹ *Gülmez v Turkey*, judgment of 20 May 2008 [Section II] (app. no. 16330/02), that concerns disciplinary proceedings against a prisoner

⁷⁰ *Estrikh v Latvia*, as above

⁷¹ See a.o. *Kučera v Slovakia*, as above, §130; *Klamecki v Poland*, as above, § 135

⁷² See a.o. *Messina* (no. 2) v Italy, cited above, §§ 65-67; *Indelicato v Italy* (dec.), as above, § 254

- High security facilities: physical separation of a detainee from his or her visitors (glass partition) may be justified in certain cases by security considerations, such as to prevent escape from prison. For instance, security might be concentrated on those occasions when, and places where, the prisoner might obtain or keep objects which could be used in an attempt at escape or where he or she might obtain or exchange information relating to such an attempt.⁷³

3.5.2 Duration of the restriction

The question of the duration of the restriction is crucial both in terms of the length of the separation from family members and in terms of the possible continuity of the security risk (often invoked by prison authorities) as the situation might change with time.

In *Mosayef v Russia*, the restrictions had been imposed for the whole duration of the detention, that is, three and a half years. The Court underlines in its judgment that: 'The effect of such a long period of time, which must have taken a heavy toll on the applicant and his family, is a further factor weighing in favour of a finding that the contested measure was disproportionate'.⁷⁴

Public authorities must also be able to demonstrate that the continuous application of the restriction measures is justified under ECHR Article 8, paragraph 2. For instance, in the *Ferla* case, the Court concluded that the measure in question reduced the applicant's family life to a degree that could be justified neither by the inherent limitations involved in detention nor by the pursuance of the legitimate aim relied on by the government. In this case, even though the applicant's wife was a witness in the criminal proceedings against the remand prisoner and had testified during the investigative stage of the proceedings, she had first stressed that she had no information to offer and subsequently refused to testify during the investigation and repeated her refusal once the trial started. In addition, the domestic authorities:

*[D]id not consider any alternative means of ensuring that the applicant's contact with his wife would not lead to collusion or otherwise obstruct the process of taking evidence such as, for example, subjection of their contact to supervision by a prison officer or by imposing other restrictions on the nature, frequency and duration of contact.*⁷⁵

In the absence of any established security risk, a special regime that denies any physical contact between a prisoner and their visitors cannot be justified. As far as the question of the assessment of the security risk is concerned, the Court insists on the fact that the domestic courts must ascertain the nature of the security issues in the specific case and during the whole detention. In *Ciorap v Moldova*, the domestic courts confined themselves to a perceived general need to preserve the safety of detainees and visitors: they made no concrete assessment of a risk of collusion, re-offending or escaping. In addition, the fact that visits were suddenly made possible after a long period, without any drastic change in the applicant's situation or other relevant circumstances made the Court conclude that no actual security risk had been at stake.⁷⁶

⁷³ See Italian cases, as above as well as Dutch cases concerning a high security prison regime designed to prevent escapes, for example: *Lorsé and Others v the Netherlands*, as above, § 85

⁷⁴ *Mosayef v Russia*, as above, § 258

⁷⁵ *Ferla v Poland*, as above, §§ 46-47

⁷⁶ *Ciorap v Moldova*, as above, § 117

Finally, general restrictions on visits are found problematic by the Court. In a case where the law 'restricted the maximum frequency of family visits to two per month in a general manner, without affording any degree of flexibility for determining whether such limitations were appropriate or indeed necessary in each individual case', the Court has found that in the absence of relevant reasons to justify the restrictions⁷⁷ the state had violated Article 8 of the ECHR.⁷⁸ Along the same line, the Court has held that restricting a remand prisoner, who did not pose any security risk, to one family visit a month did not pursue, and was not proportionate to any legitimate aim.⁷⁹

3.5.3 Search of visitors to the prison

There is no case law concerning search of children visiting a parent in prison. However, the Court has set down a number of principles that apply to all visitors.

First of all, a search which is not carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose may constitute a violation of Article 3.⁸⁰ In the *Wainwright v United Kingdom* judgment, the Court recalls a number of situations where Article 3 has been engaged: a prisoner who was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands; a search which was conducted before four guards who derided and verbally abused the prisoner; a search that had no established connection with the preservation of prison security and prevention of crime or disorder.⁸¹

According to the Court, a strip-search generally constitutes an interference under the first paragraph of Article 8 and needs to be justified. The Court accepts the contention that there are endemic drug problems in some prisons and that the prison authorities may have a suspicion that prisoners' relatives may try to smuggle drugs to the prisoner; the Court therefore accepts that the searching of visitors is a legitimate preventive measure. At the same time, the Court is well aware of the fact that in most cases there is no direct evidence to connect visitors with any smuggling of drugs into the prison. In *Wainwright v United Kingdom*, the Court is therefore of the opinion that:

*[t]he application of such a highly invasive and potentially debasing procedure to persons who are not convicted prisoners or under reasonable suspicion of having committed a criminal offence must be conducted with rigorous adherence to procedures and all due respect to their human dignity.*⁸²

The Court found a violation of Article 8 because the prison officers who carried out the searches had failed to comply with their own regulations:

Where procedures are laid down for the proper conduct of searches on outsiders to the prison who may very well be innocent of any wrongdoing, it behoves the prison authorities to comply strictly with those safeguards and by rigorous precautions protect

⁷⁷ That is, risk of collusion or obstruction to the process of collecting evidences or security considerations relating to criminal family links

⁷⁸ *Mosayef v Russia*, as above, § 255

⁷⁹ *Nowicka v Poland*, judgment of 3 December 2002, application no. 30218/96, §§ 73–77

⁸⁰ *Wainwright v United Kingdom*, judgment of 26 September 2006, application no. 12350/04, §§ 42–43. In this judgment, the Court recalls a number of situation where Article 3 has been engaged: prisoner was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands; search was conducted before four guards who derided and verbally abused the prisoner; search that had no established connection with the preservation of prison security and prevention of crime or disorder (§ 42)

⁸¹ *Wainwright v United Kingdom*, as above, § 42

⁸² *Wainwright v United Kingdom*, as above, § 44

*the dignity of those being searched from being assailed any further than is necessary. They did not do so in this case.*⁸³

In the absence of more cases, and cases concerning children, this is the framework put in place by the ECtHR. In addition, the Parliamentary Assembly of the Council of Europe is aware that search procedures may be frightening for children and recommends that searches and security procedures involving children should be carried out in a non-threatening manner.⁸⁴

In addition, a number of concrete issues may also infringe on the private life of children visiting prisons: registering of children who are visitors in prison, taking pictures of children for the purpose of identifying them again on later visits, recording of telephone conversations between a prisoner and his child, etc. There is no specific standard concerning children visiting prison. However, as with all limitations put on the right to private life and correspondence, it is paramount that these limitations are in accordance with the law, pursue a legitimate aim and are necessary, that is, proportionate with the aim they pursue. Besides, in all matters concerning children, the prison authorities must give primary consideration to the best interests of the child. In principle, this should entail that special considerations are taken when conducting search procedures involving children.

3.5.4 Critical assessment of the ECtHR case law

The ECtHR has played an important role in developing the rights of prisoners in Europe and has thereby ameliorated their situation, the quality of their family life, among other rights.⁸⁵ It is, however, striking that the case law of the ECtHR mostly deals with the parent's situation and their rights at stake. It is very seldom that the situation of the child is assessed, separately from the spouse, as most cases are being brought by prisoners and sometimes their spouses, but they almost never bring a separate claim on behalf of their children. It must therefore be noted that in the *Moiseyev* judgment (claim brought by the prisoner) which deals explicitly with the restrictions to visits to a remand prisoner by his wife and minor daughter, the Court found a violation of Article 8. The *Kleuver* case (claim brought by the prisoner and her son) only deals with the situation of the 'first applicant'; the second applicant (a newborn baby) is not considered to have a separate argument on his own merits.⁸⁶

Even if there are children involved, the assessment of their specific situation is not made by the Court. Indeed, the best interest of the child has no paramount weight in the assessment of the various interests at stake: prevention of crime, public order or protection of the rights of others. In this respect, the reasoning of the Court in the *Kleuver* judgement is quite striking: among other points, the Court is of the view that the applicant knew that she was pregnant when she committed the offence:

The first applicant could not legitimately claim that the competent national authorities ought to have taken any special measures in order to secure her interests in having the child with her in prison. In this connection, the Court cannot but note that she was fully aware of the fact that she was pregnant when she embarked upon the criminal activity that led to her detention. Her detention in a closed prison with particular security arrangements had been made necessary by her own conduct, namely the seriousness

⁸³ *Wainwright v United Kingdom*, as above, § 48

⁸⁴ *Women in prison*, Report of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 11619 revised, 23 June 2008, pt. 45. See also §§ 12-16 on the social and psychological impact of parental imprisonment on children, pt. 48

⁸⁵ Murdoch, J. (2006) as above p. 239

⁸⁶ *Kleuver v Norway*, decision of 30 April 2002, app. no. 45837/99

*of the drugs offences of which she was suspected, and later convicted, her actual attempt to flee as well as the obvious risk of her absconding as demonstrated by her attempt of flight. Understandably, this state of affairs would have implications for her son.*⁸⁷

This course of reasoning is very unfortunate in the way that it solely deals with the situation of the parent and her responsibility for the situation she has created. However, the son has no responsibility whatsoever for the fact that his mother was on remand at the time of his birth (and later convicted) – he did not ‘know’ about the situation before he was born. He is, however, the one who has to suffer the separation from his mother.⁸⁸ The approach followed by the Court is consistent with ECtHR case law on immigration matters (family reunification, expulsion of a parent from the country of residence). In such cases, the responsibility of the parent in separating him- or herself from his or her child(ren) (leaving the home country to emigrate, committing criminal offences that lead to expulsion, etc) seems to play an overpowering role, which consequently denies any taking in to consideration of the more specific perspective of the child.⁸⁹

To date, no account has really been taken of children’s perspectives in ECtHR case law that only indirectly concerns children. The situation is different when the Court deals with cases on the compulsory taking of children in to public care as well as on parental rights and contacts between parents and children after a divorce. In these cases, the Court makes frequent use of standards of protection of children’s rights and has developed a large body of case law on the respect of the best interests of the child and the respect of the views of the child.⁹⁰ However, this case law concerns mostly the parent’s right to respect for family life and the decisions taken by public authorities in order to protect the best interest of the child (taking of the child in to public care, transfer of parental rights to one parent, decision to limit the contact rights of a parent). In these cases, the Court enhances the best interest of the child as a paramount interest to be protected in the decision-making process at domestic level and by the Court itself.

The situation of children of imprisoned parents is quite different in the way that the Court (or the Commission) has never dealt directly with the impact of restrictions on family visits on the children’s welfare. It mostly deals with the imprisoned parent’s family life. In these cases, the imprisoned parent’s right to respect for family life always collides with the other interests at stake or the margin of appreciation of the state.

⁸⁷ Kleuver v Norway, as above, p. 9

⁸⁸ In this case, according to its usual practice, the Court decides not to pronounce any general view on to what extent the Contracting States may be obliged under Article 8 of the Convention to take measures to the effect of offering facilities for a mother and a newborn baby to stay together, but confines its examination to the concrete facts of the case. In the specific case, the prison concerned was deemed ‘unsuitable for keeping small children, in view of inter alia its architectural disposition, the sanitary conditions there and the composition of the prison population’. The Court sees no reason to question ‘the assessment made by the national authorities that the first applicant’s wishes to have her son with her in the prison could not have been accommodated unless substantial alterations were made to the prison conditions, for the protection of the child’s best interests’. In addition, the Court is satisfied with the national authorities’ view that the mother’s as well as the child’s interests were adequately protected by the manner in which they were treated by the authorities (meetings 5 times a week in childcare, baby kept at an institution offering high quality services, arrangements made so that he could be fed with his mother’s milk, steps taken to ensure that the mother’s views and interests were heard, etc.)

⁸⁹ Kilkelly, U. (1999) *The Child and the European Convention on Human Rights*. Dartmouth: Ashgate. pp.219-221. See however, the recent views of the Human Rights Committee in the case of Mohamed El-Hichou v Denmark, see below at pt. 5.1 and footnote 124

⁹⁰ as above pp. 239-294

Here, the fact that it must be accorded primary consideration to the best interest of the child is not taken in to account.⁹¹

3.6 Obligation to assist

Fortunately for the protection of the best interests of the child, soft law instruments on the principles and standards applicable to prisoners provide an obligation for public authorities to assist children in maintaining contact with their parents.

According to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 31:

*The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.*⁹²

Along the same lines, the European Prison Rules from 2006 state:

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

*24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.*⁹³

This obligation is very much in line with the positive obligation imposed by the ECtHR on states in matters pertaining to taking children into public custody or parental rights and contacts between parents and children after a divorce. Based on the assertion that ‘the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of ‘family life’ within the meaning of Article 8 of the Convention’,⁹⁴ the Court has established a number of positive obligations for states to act in order to assist parents in establishing or re-establishing contact after a period of separation, whether the separation is due to compulsory taking of children into public care or private reasons (for example, problems between parents in custody cases). In this respect, ‘the Court has consistently held that Article 8 includes a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action’.⁹⁵

⁹¹ This case-law is very much in line with the Court’s case-law concerning family reunification (Ahmut v the Netherlands, judgement of 26 October 1996, appl. no. 21702/93, § 70.) or the expulsion of a parent from the territory of the state where his child is living (Dalia v France, judgement of 19 February 1998, appl. no. 26102/95, § 54). In these cases too, the best interests of the child to be with his parents is balanced with many other considerations, such as the fact that, in family reunification cases, the parent made a conscious decision to leave his children behind at the moment of emigrating

⁹² UN General Assembly, December 1988, A/RES/43/173

⁹³ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules. The European Prison Charter that the Parliamentary Assembly mentions in some of its document is not an actual charter; there is a recommendation to make a Charter by the Parliamentary Assembly of the Council of Europe [Parliamentary Assembly Recommendation 1747 (2006)]. However the Committee of Ministers of the Council of Europe [see Doc. 11041 of 2 October 2006 – reply from the Committee of Ministers] has not followed up on this recommendation as it considers that regularly updated European Prison Rules play the same role.]

⁹⁴ See, among other recent authorities, Eberhard and M. v Slovenia, no. 8673/05 and 9733/05, § 125, 1 December 2009 or Monory v Romania and Hungary, no. 71099/01, § 70, 5 April 2005

⁹⁵ See, for instance, Hokkanen v Finland, no. 19823/92, 23 September 1994, § 55; Eriksson v Sweden 22 June 1989, Series A no. 156, § 71

Concerning the right to access to a child, the former European Commission of Human Rights has held in a case concerning the refusal of transfer of a prisoner to a prison near to his home:

*The Commission cannot ignore the fact that the prison authorities do not seem to have done everything in their power to guarantee the effective exercise of the applicant's right of access to his daughter. The Commission wonders whether greater efforts to move the applicant closer to his daughter's place of residence, bearing in mind, in particular, the child's mother's reluctance to let her meet her father, might not have been possible and compatible with the requirements of prison organisation and security.*⁹⁶

Specific obligations to assist also exist concerning specific types of prisoners. As far as women are concerned, the Parliamentary Assembly of the Council of Europe's Resolution on Women in Prison stresses that states must 'ensure that mothers in custody are placed in prisons within a reasonable distance and travelling time of their families'.⁹⁷ In addition, 'the needs of foreign women whose children are in other countries must be fully considered and met wherever possible'.⁹⁸

All these concrete efforts are part of a general obligation to assist prisoners in maintaining contact with their children. Most of these texts are aimed at prisoners and not at their children, but they focus on the relationship between the prisoner (father or mother) and their children. Focusing on the situation of children, the Committee on the Rights of the Child has recommended that states ensure that when children are placed in alternative care while their mother is detained, alternative care allows the child to maintain personal and direct contact with the mother who remains in prison.⁹⁹

4. The case of babies staying in prison with their mother¹⁰⁰

The question of women and babies in prison poses a dilemma: 'on the one hand, prisons clearly do not provide an appropriate environment for babies and young children, and on the other hand, the forcible separation of mothers and infants is highly undesirable'.¹⁰¹ The general approach advocated by the Parliamentary Assembly of the Council of Europe is that the overwhelming majority of female offenders with young children should be managed in the community while a more humane approach must be found to those few mothers of young children who have committed serious offences

⁹⁶ *Quinas v France*, Commission decision of 12 March 1990 (app. no. 13756/88), DR 65/265, p. 278. In the specific case, the Commission found that the actual possibilities to organise visits were satisfactory: the Commission noted in particular that there was nothing to prevent the applicant exercising his right of access through meetings between him and his daughter organised in the prison where he was detained, if necessary with the help of the prison social services. It also notes that the Government had mentioned the possibility that the applicant might be granted temporary release under escort in order to meet his daughter

⁹⁷ Parliamentary Assembly of the Council of Europe's Resolution 1663(2009) of 28 April 2009 on Women in Prison, pt. 9.7

⁹⁸ As above pt. 9.6

⁹⁹ Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Thailand, 17 March 2006, CRC/C/THA/CO/2, § 48

¹⁰⁰ For a study of the legal and practical situation of mothers and babies in prison in Denmark, see: Smith, P.S. and Jakobsen, J. (2010) as above note 2, pp. 201-215

¹⁰¹ 10th General Report the Committee for the Prevention of Torture (CPT), 2000, CPT/Inf.(2000)13 (EN), pt. 28

and who must be sentenced to detention.¹⁰² This also concerns detention on remand.¹⁰³ When detention of both mothers and babies cannot be avoided, the:

*[g]overning principle in all cases must be the welfare of the child. (...) 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.*¹⁰⁴

According to the European Prison Rules:

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

*36.3 Special accommodation shall be set aside to protect the welfare of such infants.*¹⁰⁵

Rule 36 sets the framework for having babies stay in prison with their mother in a very broad manner by emphasising that the best interests of the infant should be the determining factor. The Rule does not set any upper limit for the age that infants may reach before they have to be moved out of the prison.¹⁰⁶

The Parliamentary Assembly of the Council of Europe's Resolution 1663 (2009) of 28 April 2009 on Women in Prison¹⁰⁷ sums up the human rights standards that need to be achieved concerning female prisoners that have their children with them. The main points are:

- prison regimes and facilities must be 'flexible enough to meet the requirements of pregnant women, breast-feeding mothers and prisoners whose children are with them';¹⁰⁸
- 'in situations where babies and young children in prison with their mother have to be separated from her, this (must) done gradually, so that the process is as painless and non-threatening as possible';¹⁰⁹
- 'children staying in prisons with their mothers (must be) given access to crèches outside the prison, offering them opportunities for socialisation with other

¹⁰² Report Mothers and Babies in Prison of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe (Doc. 8762, 9 June 2000) - (summary)

¹⁰³ States must 'ensure that, whenever there is no possibility of using alternative measures to remand in custody, pre-trial conditions are as favourable as possible. In the case of restrictions which adversely affect the families of prisoners, such as restrictions on visits and place of detention, prisons must be as flexible as possible' (Parliamentary Assembly of the Council of Europe's Resolution 1663(2009) of 28 April 2009 on Women in Prison, pt. 9.1)

¹⁰⁴ 10th General Report of the Committee for the Prevention of Torture (CPT), 2000 [CPT/Inf.(2000)13 (EN)], chapter on 'Women Deprived of their Liberty' (pt. 29)

¹⁰⁵ European Prison Rules (2006), Rule 36

¹⁰⁶ Council of Europe: European Prison Rules, Strasbourg: Council of Europe, 2006, pp. 61-62

¹⁰⁷ Parliamentary Assembly of the Council of Europe's Resolution 1663(2009) of 28 April 2009 on Women in Prison. This resolution builds on a Report (Women in prison) of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 11619 revised, 23 June 2008; this report also deals with the situation of pregnant prisoners (pt.18-20) as well as issues related to birth, breastfeeding and postnatal health (pt. 21-23)

¹⁰⁸ as above, pt. 9.3

¹⁰⁹ as above, pt. 9.4

children and alleviating the detrimental social effects of imprisonment on their personal development'.¹¹⁰

It must be noted that an earlier Recommendation of the Council of Europe's Parliamentary Assembly also enhanced the need to ensure that 'fathers have more flexible visiting rights so that the child may spend a little time with its parents'.¹¹¹

The Parliamentary Assembly of the Council of Europe's Resolution 1663(2009) is perhaps a remedy to the lack of European consensus on which the Court built its inadmissibility decision in the *Kleuver v Norway* case.¹¹² In 2002, when looking at the existence of a common European standard on detention centres offering facilities for a mother and a newborn baby to stay together, the Court noted that it was difficult to discern a common European standard in this area: according to the Court, detention centres offering facilities for mothers and newborn babies to stay together existed mostly in open institutions, but not in closed institutions of the kind that was at issue in the Norwegian case.¹¹³ The Resolution from 2009 is in any case now showing that there is a consensus within the Council of Europe on the necessity to take the special needs of women with babies in prison in to consideration.

5. The child's access to their rights

The previous parts of this chapter show that there is no doubt as to what the perspective of the child entails when dealing with children of imprisoned parents:

- the child has a right to be informed about what is going on;
- the child has the right to see his/her imprisoned parent(s) on a regular basis and in a manner that respects his/her physical and moral integrity;
- the child has a right to be assisted by public authorities that have the obligation to facilitate his/her contact with the imprisoned parent(s).

The main challenge is therefore that children, in their own capacity, are very seldom in a position to claim their rights either because they do not know they have such rights or because they have nowhere to address their claim. The question of the access of children to remedies is therefore quite central to the rights of children of imprisoned parents (5.1). However, the rights of children can also be implemented through other means than redress mechanisms: hence, the perspective of the child is slowly emerging in its own right in the international human rights forum and opens for a greater awareness to the specificity of the situation of children of imprisoned parents (5.2).

5.1 The limited access of children to remedies

The CRC has made children rights-holders. Instead of just being the recipient of care and protection, children do hold rights,¹¹⁴ which the state must protect. There is, however, an important distinction between holding rights and having the legal capacity

¹¹⁰ as above, pt. 9.5

¹¹¹ Recommendation 1469 (2000) of the Parliamentary Assembly of the Council of Europe on Mothers and babies in prison (based upon Report Mothers and Babies in Prison of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 8762, 9 June 2000), pt. 5.v.

¹¹² *Kleuver v Norway*, judgment of 30 April 2002, app. no. 45837/99

¹¹³ as above, p. 9. For further discussion of this issue see chapter 4 of this report (case study on Denmark).

¹¹⁴ Doek, J. E. (2006) What does the Children's Convention require? *Emory International Law Review*, Vol. 20 (1), pp. 199-208

to act when these rights are not being respected. In many Western European countries, a child does not have the capacity to act in his or her own name. The parents, unless they are deprived of their parental rights, or guardians can act on their behalf. According to the CRC, children have the right to express their views and heard in matters that concern them,¹¹⁵ which is not the same as actually claiming that a decision from the authorities violates their rights.¹¹⁶ Even in cases where children have the legal capacity to act, many practical problems such as information about remedies or access to remedies may hinder their actual capacity to claim their rights.

As far as children of imprisoned parents are concerned, a further complication occurs as the original decisions at stake (arrest, restrictions on visit, refusal of visit, etc) are exclusively directed at the detained parent(s). It is therefore impossible for the child to contest them even if helped by the other parent, a guardian or a lawyer. The only possibility for the child is to appeal either to specific domestic mechanisms (for example, ombudsman or children's ombudsman), or to a supra national human rights mechanism and claim that his or her right to respect for private and family life has been violated.

In theory, children may bring their complaints to international or regional human rights mechanisms. There is, however, a growing awareness of the difficulties that face children's access to international justice.¹¹⁷

The Committee on the Rights of the Child does not have competence to receive individual complaints which in itself is quite telling. Children can in theory lodge complaints before other UN treaty bodies, such as the Human Rights Committee¹¹⁸ or the Committee Against Torture.¹¹⁹ The ECtHR may also receive applications from 'any person' claiming to be a victim of a violation of a right set forth in the Convention:¹²⁰ a child may therefore lodge a complaint with the Court "even if he or she is not entitled to bring an action before the national courts".¹²¹ In the absence of a national remedy for the child, the Court is competent to examine the complaint on its merits. In practice, however, in most situations concerning children, it is one or both parents who act on behalf of the child. There are only a few children who have complained to the ECtHR, most of the time as co-complainants with one parent.¹²² In a few cases, older children

¹¹⁵ See above 2.2

¹¹⁶ For a theory on the rights of the child, see: Sund, L-G: (2006) 'The Rights of the Child as Legally Protected Interests' *International Journal of Children's Rights* Vol. 14 pp. 327-337

¹¹⁷ See the publication of the Council of Europe (2008) *International justice for children*, Strasbourg: Council of Europe Publishing

¹¹⁸ Individual communications relating to states parties to the First Optional Protocol to the International Covenant on Civil and Political Rights

¹¹⁹ Individual communications relating to states parties who have made the necessary declaration under article 22 of the Convention Against Torture

¹²⁰ ECHR, Article. 34

¹²¹ Berro-Lefèvre, I. "Improving children's access to the European Court of Human Rights", in: Council of Europe: as above p.70

¹²² See: Kleuver v Norway, judgment of 30 April 2002, app. no. 45837/99 or Marckx v Belgium, judgment of 13 June 1979 (A.31); in the case of A. v United-Kingdom (judgement of 23 September 1998) the child was the only complainant before the Court, but the complaint was originally lodged by the father and the son. It concerned the beating up of the son by his stepfather. The Commission considered that the father did not have any independent complaints of his own in the case, nor he claimed to be an "indirect victim" of any alleged violations. (Decision of the Commission as to the admissibility of Application No. 25599/94 by A and B against the United Kingdom, 9 September 1996)

have presented their own complaints.¹²³ In such cases, children may be represented by solicitors provided that they can prove their authority to act on behalf of the child.¹²⁴

A recent case before the Human Rights Committee (HRC) shows that a complaint from a minor may be more successful than the same complaint presented by his or her parents. In a case concerning family reunification, the Committee stated plainly that:

*[a]t stake in the present case are the [complainant's] rights as a minor to maintain a family life with his father (...) and to receive protection measures as required by his status as a minor. The Committee notes that the author [of the complaint] cannot be held responsible for any decisions taken by his parents in relation to his custody, upbringing and residence.*¹²⁵

In doing so, the HRC moves away from the argument that parents are responsible for their own actions or decisions in relation to their children and that both parents and children must bear the consequences of such actions or decisions.¹²⁶ Here, the situation of the child is seen as very different of the one of his father and the Committee concludes to a violation of Articles 23 (protection of the family) and 24 (protection of the child) of the International Covenant on Civil and Political Rights (ICCPR).¹²⁷

Human rights are being developed at local and global levels. At both levels, courts of law and other control mechanisms ensure their practical implementation. Such mechanisms are first of all reactive, which means that they only deal with the problems that are presented to them. This implies that if no lawyer takes the perspective of the child in to account in a complaint, there is very little chance that a court will do so – of its own initiative. Lawyers must therefore enhance the perspective of the children of imprisoned parents in cases concerning visits in order for the courts to be able to take the best interests of the child in to account in matters that only indirectly concern them. A London High Court (administrative court) judgment, which concerns the exclusion of a prisoner from a mother and baby unit of a prison as a result of her poor behaviour, put a strong emphasis on assessing the effect of the separation on the baby, moving thereby away from only taking the family life of the imprisoned woman in to consideration.¹²⁸

The attention to the perspective of the child is to date only very timid when looking at courts of justice handling of decisions concerning the family life of prisoners. On the contrary, an increasing attention to the perspective of children is to be found in international forums and international documents.

5.2 Increasing attention to the perspective of children in international forums and international documents

While children have in practice very little access to legal remedies, the perspective of the child is nevertheless slowly emerging in international forums and international documents.

¹²³ See: *Aydin v Turkey*, judgment of 25 September 1997; *Tyrer v United Kingdom*, judgment of 25 April 1978

¹²⁴ See on the standing of children, *Berro-Lefèvre, Isabelle* as above pp. 70-71; Leach, P. (2005) *Taking a case to the European Court of Human Rights*, Oxford, Oxford University Press, pp. 119-120

¹²⁵ Human Rights Committee: *Mohamed El-Hichou v Denmark*, Communication no.1554/2007, Views of 22 July 2010, pt. 7.4

¹²⁶ See this chapter section 3.5.4

¹²⁷ Human Rights Committee: *Mohamed El-Hichou v Denmark*, op. cit. 124, pt. 8

¹²⁸ *R. v Secretary of State (Administrative Court Maurice Kay J)*, 16 January 2003, [2003] EWHC 155 (admin)

5.2.1 *The Committee on the Rights of the Child*

When examining states' reports under Article 44 of the CRC, the Committee on the Rights of the Child looks in to a number of points, one of them being 'Family environment and alternative care'. Under this point, the Committee scrutinises the rights of children in situations such as 'alternative care for children without parental care', 'adoption' or 'abuse or neglect'. In a few reports, the Committee has also looked in to the situation of children of imprisoned parents or children in prison with their mothers.¹²⁹

This has given the Committee an opportunity to specify a number of obligations under the CRC in respect to children of imprisoned parents:

- The best interests of the child of a defendant /an imprisoned parent must be considered carefully and independently 'by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child'.¹³⁰
- Concerning children placed in alternative care, the state must ensure that alternative care allows the child to maintain personal relations and direct contact with the parent who remains in prison.¹³¹ Children who have an imprisoned parent must be provided 'with adequate support, including counselling, and to facilitate contacts with their parents in prison, whenever this is not contrary to the child's best interest'.¹³²
- Concerning children residing in prison with their mothers, the Committee recommends that the state ensures that living conditions in prisons are adequate for the child's early development. It further recommends that states develop and implement adequate alternative care for children who are removed from prison, and allow them to maintain personal relations and direct contact with their mothers remaining in prison.¹³³

More recently, the Committee has recommended that states strengthen their efforts to assist parents to exercise their parental responsibilities. In the case of divorce or separation, all professionals and practitioners involved must assist children's contact with both parents, considering under all circumstances the best interests of the child. The Committee also recommends that prison authorities facilitate the visiting arrangements of a child with his or her imprisoned parent(s).¹³⁴

¹²⁹ Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Australia, 20 October 2005, CRC/C/15/Add.268 §§ 40 and 41; Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Nepal, 21 September 2005, CRC/C/15/Add.261 §§ 51 and 52; Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: The Islamic Republic of Iran, 31 March 2005, CRC/C/15/Add.254 §§ 51 and 52; Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Philippines, 21 September 2005, CRC/C/15/Add.259 §§ 53 and 54; Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Thailand, 17 March 2006, CRC/C/THA/CO/2, § 48

¹³⁰ Concluding observations: Thailand (2006) as above

¹³¹ Among others Concluding observations: Australia (2005) and Thailand (2006) as above, note 128

¹³² Concluding observations: Australia (2005), as above

¹³³ Concluding observations on Thailand (2006), Iran (2005), Philippines (2005), Nepal (2005) as above.

¹³⁴ Committee on the Rights of the Child, Considerations of reports submitted by States Parties. Concluding observations: Norway, 3 March 2010, CRC/C/NOR/CO/4 § 33

5.2.2 *The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has also looked into the question of children of imprisoned parents, during his last visit in Denmark. Manfred Nowak has underscored the efforts made by the Danish prison authorities in his report on his last mission to Denmark. He has highlighted:

[t]he Government's efforts, together with civil society, to aid and encourage contact between prisoners and their children by establishing a child-friendly environment within detention facilities. He notes that children of convicted prisoners up to 3 may live with their mother or father in prison, provided that he or she is capable of taking care of the child.¹³⁵

In addition, he has drawn attention to the minimum standards for visiting facilities set out by the Department of Prisons and Probation in 2004 which stipulate, among other things, that the visiting facilities must appear light and friendly, be nicely decorated, and have a suitable selection of toys to stimulate contact between prisoners and their children. The Special Rapporteur names a couple of concrete examples of good family visiting facilities. He also draws attention to the positive outputs that came from the joint efforts of prison staff, prisoners and civil society.¹³⁶

5.2.3 *The Parliamentary Assembly of the Council of Europe*

The Council of Europe's Resolution on Women in Prison¹³⁷ builds on a Report of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe on Women in prison. Part of the report focuses on the perspective of the child:

In most cases, the imprisonment of a woman can lead to the violation not only of her rights, but also of those of her children.¹³⁸

The report is concerned with a number of issues including:

- Visiting facilities: visiting facilities should be designed 'with children in mind' and include play facilities.¹³⁹
- Search procedures: they may be frightening for children. Searches and security procedures involving children should be carried out in a non-threatening manner.¹⁴⁰
- Overnight visits: they should be made available for both male and female prisoners, where possible, using a separate apartment. Overnight visits are

¹³⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Denmark, A/HRC/10/44/Add.2, 2009, § 31

¹³⁶ The Special Rapporteur refers to the visiting flats of the East Jutland State Prison, as well as the children's visiting area of Vridsløselille State Prison stands. For further discussion on this see chapter 4 of this report (case study on Denmark)

¹³⁷ Resolution 1663 (2009) of the Parliamentary Assembly of the Council of Europe on Women in prison, 28 April 2009

¹³⁸ Women in prison, Report of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 11619 revised, 23 June 2008, pt.45. See also §§ 12-16 on the social and psychological impact of parental imprisonment on children

¹³⁹ Report Women in prison pt. 47

¹⁴⁰ As above, pt. 48

seen as a chance for a family to bond together. Additional conjugal visits should be made available.¹⁴¹

- Training of staff: staff should receive training to deal with visiting children.¹⁴²
- Evaluation of measures impacting family life: any new measures or policies proposed should be analysed for their effects on children visiting the prison and take into account the rights of the child.¹⁴³

All these initiatives have the perspective of the child as their main focus and complement the many standards on prisoners analysed above. It must be underlined that the observations made by UN monitoring organs (CRC, Special Rapporteur) rely primarily on information given by states, national human rights institutions and NGOs (in reports and during visits). It is only because the perspective of the child is enhanced by these institutions and organisations that it is reflected in the monitoring work of the CRC and the Special Rapporteur.

6. Conclusion and perspectives

The rights of children of imprisoned parents are protected under international and European human rights law through the Convention on the Rights of the Child and through international and European standards on the respect for family life of prisoners and their family. The human rights framework is in place, and an effective protection of the human rights of the children of imprisoned parents is mainly a question of maximising the potential that lies in children's rights and in the right to respect for family life of the children of imprisoned parents.

The CRC sets a broad framework for the protection of the best interests of the child and the right of the child to be heard in matters that concern him or her. These two main pillars of the CRC have their roots in custody issues (private custody disputes or placing of children in public custody). However, in some cases, the Committee on the Rights of the Child has chosen to look into the situation of children of imprisoned parents and children in prison with their mother, and has given a number of recommendations to ensure a better protection of the rights of the children involved in such situations.

The international and European human rights frameworks are very much focused on the right to respect for family life of prisoners and of their family. The standards on prisoners focus on the prisoners themselves and even a general human rights protection instrument such as the European Convention on Human Rights focuses almost exclusively on the rights of the parents, as they are most often the only claimants in cases concerning restrictions on family visits. The issue of the best interests of the child is taken into consideration in many judgments of the European Court of Human Rights concerning custody of children, adoption, etc, but the perspective of the child is remarkably absent from the judgments of the European Court of Human Rights that involve children of imprisoned parents, as well as from most of the standards on prisoners rights. It is therefore important that the European Court of Human Rights, as well as other human rights monitoring bodies, remembers that the best interest of the child must be the primary consideration when balancing the

¹⁴¹ As above pt. 49.

¹⁴² As above pt.48.

¹⁴³ As above

interests at stake in a given case: examining the situation from the perspective of the prisoner or the prison authorities is not enough.

Children have difficulties in accessing legal remedies when their rights are being violated. International actors, such as the European Court of Human Rights, are getting more and more aware of their shortcomings in the matter of an actual and effective access of children to human rights protection mechanisms. Hence, the European Court of Human Rights must develop a greater awareness of children's complaints, for example, by identifying them early in the Commission's and the Court's procedures. At national level, children must be made more aware of both their rights and the remedies they can access.

As implementation of the rights of children of imprisoned parents does not happen on a large scale through litigation, public authorities must ensure implementation of these rights at local level. In doing so, they must get inspiration from the new initiatives that put the child's perspective at the centre of all preoccupations when dealing with the family life of prisoners and their children. Hence, better information and protection of children's rights at domestic level will support the development of the international human rights framework that is applicable to the children of imprisoned parents, which in turn must be implemented in countries that are lagging behind.

Chapter 4: The Danish case study

By Peter Scharff Smith and Janne Jakobsen

1. Introduction

1.1 Imprisonment in a Danish context

As in many other countries, the prison population has risen in Denmark during recent years partly due to legislation introducing longer sentences as well as to a gradual, but significant decline, in the use of parole after serving two-thirds of a sentence. In 2001, the Danish prison population was on average 3,563; it had risen to 4,041 by 2005. During the following years it dropped slightly but then rose again. On 12 March 2010, there were 4,005 prisoners in the Danish prison system.¹ This means that the Danish prison population has risen by nearly 15 per cent since 2000. The rate of imprisonment was 71 per 100,000 citizens in Denmark in May 2010, and is thus still low compared to many other countries.²

One of the characteristics of the Danish prison system is extensive use of so-called 'open prisons', where the regime is relatively liberal – insofar as prison regimes go. Of the 13 prisons in Denmark, five are closed prisons and eight are open prisons. Out of the total Danish prison capacity of 4,116 spaces, the open prisons take up more than a third – that is, 1,421 spaces, compared to 1,749 remand and 946 closed facility spaces.³ The atmosphere in an open prison is certainly very different from the so-called 'closed prisons' (that is, maximum security). That said, open prisons are still in many ways similar to low or medium security prisons in other parts of Europe, and closed prisons in Denmark resemble closed prisons in several Western European countries.⁴

In Denmark, conjugal visits are allowed throughout the prison system and all visits can be carried out in private visiting rooms. The entire Danish prison system currently only features two visiting rooms in which prisoner and visitor are separated by a screen, and they are rarely used.

One of the basic principles to which the Danish Prison Service adheres is the 'principle of normalisation'. The UN Special Rapporteur on Torture, Manfred Nowak who visited Denmark in 2008, described this principle as a trademark of the Danish prison system:

[m]eaning that life behind bars reflects life outside to as great an extent as possible. Taken together with an attentive approach to the concerns of prisoners by prison staff, the result is generally a high standard of conditions of detention inside Danish prisons, both in terms of infrastructure and day-to-day living standards.⁵

¹ Scharff Smith P and Jakobsen J: Når straffen rammer uskyldige. Børn af fængslede i Danmark («When the innocent are punished. [Children of imprisoned parents in Denmark] Copenhagen 2010. p. 232

² See ICPS World Prison Brief:

http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=134

³ According to a datasheet printed and e-mailed by the Directorate of the Danish Prison on .March 12th, 2010

⁴ See also Crewe, B. and Liebling, A. (2010) 'Are liberal humanitarian penal values and practices exceptional? in Ugelvik, T. and Dullum, J. (eds) Nordic Prison Practice and Policy – Exceptional or Not? London: Routledge

⁵ Manfred Nowak, UN Special Rapporteur on torture, report on Denmark, A/HRC/10/44/Add.2, 18. February 2009

There are, however, also problems in Danish prisons in addition to the problems and issues, which to a greater or lesser extent affect all prisons. Some of the current problematic issues include a rise in the use of long-term remands in custody; problems faced by female prisoners imprisoned in mixed-sex units; Greenlanders serving their sentence in Denmark thousands of kilometres from home. One particular issue is the use of pre-trial solitary confinement in Denmark, the official reason being the risk of collusion, that is, the suspect interfering with the investigation. Since the late 1970s, this practice has been widely criticised within Denmark and, especially since the 1990s, international criticism has been directed at Denmark as well as Norway and Sweden. This criticism has been voiced by not least the United Nations and the Council of Europe's torture prevention committees where, for instance, the UN Special Rapporteur Manfred Nowak, in 2008, expressed strong criticism:

*Notwithstanding the Government's efforts to restrict the use of solitary confinement, the extensive recourse to this remains a major concern, particularly with respect to pretrial detainees. Solitary confinement has a clearly documented negative impact on mental health, and therefore should be used only in exceptional circumstances or when absolutely necessary for criminal investigation purposes. In all cases, solitary confinement should be used for the shortest period of time.*⁶

Legal scholars abroad have termed the practice of pre-trial solitary confinement as a 'peculiarly Scandinavian phenomenon'.⁷

Various Danish governments have attempted to respond to the criticism (amendment acts of 1978, 1984, 2000 and 2006), and the use of solitary confinement of remand prisoners has decreased significantly but the practice is still enforced in a couple of hundred cases each year.⁸ Unfortunately, there has not been enough done to secure the health and wellbeing of these prisoners, who are also subjected to very strict visiting regimes. In fact Denmark is the only Council of Europe member state which has made a reservation to the European Prison Rules, and this relates directly to the use and health effects of solitary confinement. Rule no. 43, par. 2, of these prison rules requires that:

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

For ethical reasons Danish doctors have, however, refused to comply with this rule, which has resulted in the aforementioned reservation on the part of the Danish government. This arguably leaves remand prisoners in solitary confinement in Denmark in an especially vulnerable situation.

1.2 The Danish study

The following text is based on a research study conducted at the Danish Institute for Human Rights by Peter Scharff Smith and Janne Jakobsen and supported by the

⁶As above

⁷ Evans, M.D. and Morgan, R. (1998) Preventing Torture: A study for the prevention of Torture and Inhuman and Degrading Treatment. Oxford: Oxford University Press. The authors characterise pre-trial solitary confinement as a "..... peculiarly Scandinavian phenomenon...", p. 247. Iceland has also received the same criticism, see, for example, CPT, Visit Report, Iceland. Visit 1998, Section 15/49. See also report from the 1993 visit in Iceland. The official CPT reports are available at: <http://www.cpt.coe.int/en/>

⁸ Statistik om isolationsfængsling, JM's Forskningskontor, juni 2009

Egmont Foundation.⁹ The study is based on interviews, prison and institution visits, a legal analysis and a national survey involving the prison service, the police and the social services. The whole process from the arrest of a parent, through pre-trial and imprisonment to release is analysed from the perspective of the rights of the child.

It has been estimated that at any time there are around 4,000 children who have a parent in prison in Denmark.¹⁰ Prison conditions in Denmark are typically characterised as being relatively good compared with other jurisdictions. Still, Danish prisons resemble prisons in many Western European countries. The following research also indicates that most of the problems faced by Danish children with imprisoned parents mirror the problems described in international research. There is, for example, a considerable variation in the treatment and conditions which children of prisoners are facing in Denmark in different prisons and in contact with different social authorities. The treatment of children during visits often depends on the staff culture in the particular prison and the individual prison officer on duty, and visiting facilities in Danish prisons range from small, badly maintained and barren rooms, to visiting apartments where entire families can cook and stay overnight.

Denmark has, however, some specifically national issues which can influence the situation faced by prisoners' children. Prisoners – and thus parents – can, for example, be subject to very strict limits on communication during pre-trial detention, including outright solitary confinement, which, as mentioned above, is commonly practiced, and this may have a strong impact on children.

In this report, some issues concerning pre-trial imprisonment and imprisonment of sentenced prisoners are treated under the same heading in part 4: 'When a parent is imprisoned – the legal issues' and in part 5: 'Visiting in prison'.

2. The arrest of parents

When children explain, it is evident that the arrest of parents can leave deep traces. For example, an 18-year-old girl described the arrest of her father as the worst day in her life.¹¹ This chapter elaborates how the police in Denmark handle the arrest of parents, the experience of arrests and the effect on the arrested parent's children.

We are limited by the fact that there is very limited Danish or indeed international, research concerning police handling of arrested parents' children.¹² The basis for this chapter, therefore, builds predominantly on interviews with police officers and on a detailed questionnaire distributed to all police districts in Denmark. This material is supplemented with sources relating the experiences of people who, in various ways, are in contact with children whose parents have been arrested or detained by the police, as well as accounts from the children themselves.

First, however, we will take a look at the legal regulations that apply in Denmark when

⁹ Scharff-Smith, P. & Jakobsen, J. (2010): *Når straffen rammer uskyldige*. Copenhagen: Gyldendal.

¹⁰ Smith and Jakobsen (2010) as above, chapter 3

¹¹ Quote by a young woman on the website: <http://www.faengsel.com> (a collection of interviews with children of imprisoned parents in Denmark)

¹² The Danish police's so-called 'Knowledge Centre' and the recognised Danish criminologist, Lars Holmberg (who has specialised in police research), from the legal faculty at the University of Copenhagen advised on the paucity of research on this issue

the police arrest parents. A primary concern is the extent to which these legal regulations reflect and take into account the rights of the child and thereby protect the child's best interests.

2.1 The relevant legal issues surrounding the arrest of a parent

In connection with the arrest of parents, there are three aspects, in particular, that have legal relevance to children of prisoners:

1. The actual arrest. How are the children treated and how do they experience the situation?
2. Are the children informed about the arrest and the possible separation that subsequent detention will entail?
3. Are the social authorities notified with a view to assessing the child's situation?

The latter question is of crucial importance to a large number of issues regarding children of detainees and prisoners and, not least, the question of whether the authorities, on the whole, have the option of taking into account this group of children.

2.2 The arrest situation

The arrest of a parent can develop into a very unpleasant and traumatic experience for children, depending on how the involved parties handle the situation, including both the arrested parent and the police. In connection with the arrest situation itself and the question of whether the children suffer psychological harm, the human rights regulations are only applicable in an overall and general respect. As is apparent in the Convention of the Rights of the Child (CRC), 'the child must be protected against all forms of discriminatory treatment or punishment due to the child's parents, guardian's or family members' position, occupation, expressed views or faith' (Article 2.2). Article 16 can perhaps be applied more directly to an arrest situation, as this states that no 'child may be exposed to random or illegal interference in his or her private and family life, his or her home or his or her exchange of letters, or illegal assault on his or her honour or his or her reputation' (Article 16.1).

Chapter 69 (§ 755ff of the Act) of the Danish Administration of Justice Act contains the rules for arrest, but the rules do not specifically concern the fact that there are children present at the arrest. Paragraph 758 establishes, however, that the arrest 'must be conducted as gently as circumstances allow', which of course, to a high degree, is also in the interests of children present.¹³ The principle of a gentle approach and the principle of proportionality, however, appear to be directed towards the treatment of the detainee and not towards children who are present at the arrest. In that sense, Danish law offers no direct protection of children who witness the arrest of a parent.

2.3 Are the children informed about the arrest and imprisonment?

If the children are not present during the arrest of their parent, the question arises as to whether they are informed of the arrest and possible later imprisonment. The CRC makes it quite clear that if the child is separated from a parent as a:

[r]esult of an action initiated by a participant state, such as detention, imprisonment,

¹³ Cf. The Administration of Justice Act § 758, section 1

expulsion, deportation or death (including death by any reason while the person is in the custody of the state) of the one or both parents or of the child, the participant state must, upon request, give the parents, the child and if necessary another member of the family, the essential information of where the absent member or members of the family are located unless giving the information would be damaging to the child's welfare (9.4).

Pursuant to the Danish Administration of Justice Act, the detainee should also normally have personal – or alternatively, through a police officer – access to inform the family, employer, lawyer or others.¹⁴ The Council of Europe's Committee for the Prevention of Torture (CPT), however, found cause in 2002 to criticise Denmark on precisely this area. During its visit to Denmark in the same year, the Committee became aware that a number of detainees had been prevented from informing their families, apparently because, in several cases, this had been postponed in consideration of the police investigation – however, without this always being noted and processed correctly. The CPT further referred to the fact that even though the detainee would normally be able to inform his or her family, etc., about the arrest, the police can partly choose to do this themselves, but in consideration of the investigation may also postpone or completely exclude such notification. On this background, the CPT recommended changes to the Danish legal practice:

The CPT recommends that legal provisions be adopted to ensure that all persons detained by the police have a formally recognised right to inform a relative or another third party of their choice of their situation, as from the outset of their detention. Any possibility exceptionally to delay the exercise of this right should be clearly circumscribed in law, made subject to appropriate safeguards (e.g. any delay to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case at hand or a prosecutor) and strictly limited in time.¹⁵

The CPT revisited this problem in connection with the Committee's next, and most recent, visit to Denmark in February 2008. In its subsequent report, published in September 2008, the CPT referred to the Ministry of Justice's circular dated 12 June 2001 and circulated to the police and the prosecuting authority¹⁶ and pointed out, among other things, that the rules established to provide for contact with relatives in connection with arrest still applicable to the area, but that these rules were apparently not being followed:

Nevertheless, despite the fact that the circular has been in operation for six and a half years, the findings from the 2008 visit suggest that its instructions are still not being applied systematically by the police and, as a result, the safeguards advocated by the CPT are not wholly effective in practice.¹⁷

According to the CPT, the Ministry of Justice has promised to review the circular concerned once again and on this basis the Committee recommended that the opportunity should be used to create 'a firmer legal basis to the provisions relating to the above-mentioned fundamental safeguards, by integrating them into relevant

¹⁴ See Smith and Jakobsen (2010) as above

¹⁵ CPT report of 25 September 2002, CPT/Inf (2002) 18, § 16

¹⁶ Circular no. 12154 of 12 June 2001 from the Ministry of Justice to the police and prosecuting authority on notification to relatives, etc

¹⁷ CPT report of 25 September 2008, CPT/Inf (2008) 26, § 15

laws'.¹⁸ Specifically, in relation to the question of whether the detainee was allowed to tell relatives of his or her detention, the CPT noted that, again, the detainees who had been spoken to had not been allowed to do so. On this basis, the CPT naturally, repeated its recommendation from 2002:

The CPT reiterates its recommendation that legal provisions be adopted to ensure that all persons detained by the police have a formally recognised right to inform a relative, or another third party of their choice, of their situation, as from the very outset of their detention. Any possibility exceptionally to delay the exercise of this right should be clearly circumscribed in law and made subject to appropriate safeguards (i.e. any delay to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case at hand or a prosecutor).¹⁹

A further complication is that many detained parents choose not to tell their children the truth about their arrest. However, this can hardly be considered as a violation of the child's rights as, to a great extent, it must be the parents who decide what information is given to the child – in any event, as far as under-aged children are concerned, what is appropriate is, of course, another matter.

In any case, the remaining parent or the child's guardian must naturally be informed of the arrest and, not least, the detention as quickly as possible before the child has the possibility of getting this information at all. The detainee's right to inform the family and children, etc., should, in other words, be strengthened in Danish law and should, to a higher degree, specify when the police and prosecuting authority – quite exceptionally – can dispense with this.

2.4 Should the social authorities be informed?

One very crucial question is, whether the social authorities should be contacted when a parent is arrested and imprisoned. Public employees have the duty to inform if they surmise that a child under 18 needs special support.²⁰ When this applies to children of detained people, in practice it would most often be the police who, in connection with arrest and later custodial remand of a parent or a person with parental custody, are in a situation where they need to assess if reporting should take place. The assessment of whether the child needs special support is thus built on the police service's discretionary assessment. The assessment of whether children need special support is otherwise normally the responsibility of the social authorities which have the professional competence to make the decision.

The Convention on the Rights of the Child states, as already mentioned, 'that in all provisions regarding the child, the child's best interest must be the first priority' (Article 3.1). In extension of this stipulation, the CRC Committee has recommended that the principle of the child's best interest must be subject to an independent and careful assessment by competent professionals for all decisions on arrest/detention.²¹

With a view to taking the child's best interest into account in accordance with the

¹⁸ as above

¹⁹ CPT report of 25 September 2008, CPT/Inf (2008) 26, § 16

²⁰ 11 Public employees' duty of notification is determined in executive order no. 1336 of 30 November 2007 on the duty to inform the municipality according to the act on social service § 1, no. 1. The executive order is established with legal basis in the service act, § 153

²¹ Committee on the Rights of the Child, Forty-first session, Concluding observations: Thailand, 17/3/2006 CRC/C/THA/CO/2, f. Para. (48)

Committee's recommendations in Danish legislation, it should therefore be carefully considered whether all public employees, including the police, should be obligated to inform the municipality in all instances where the police detains a parent or a person with parental custody for more than 24 hours – that is, not just arrest, but also detention of the person concerned – so that the right professionals can attend to the consideration of the child's best interest, cf. Article 3. Which form this notification could possibly take and which procedures it should initiate at the social authorities will be discussed in a later chapter.

It could be argued that such notification is simply necessary in order for the state to have the possibility at all of living up to its responsibility to vulnerable children in this context – regardless of whether an assessment of a specific notification may lead to the authorities choosing not to take action in the case concerned. But without a notification, the authorities do not have the possibility to be pro-active and to take action.

In the so-called 'Belfast Declaration', the authorities are, for example, urged to produce 'a well developed care plan (...) involving the convicted parent, her/his child(ren) and significant others' in the event of imprisonment of a parent, which only makes sense if the relevant authorities are informed of the imprisonment at all.²²

2.5 Training of the police in handling children and other relatives in arrest situations

As is apparent from the above, how the arrest situation is tackled and whether the social authorities should perhaps be contacted is, to a high degree, left to the individual police officer's individual assessment. The question then arises, how are police officers equipped in their training to conduct these assessments?

One of the instruction leaders at the Police Academy Denmark explains:

*No two arrests are the same and therefore, you cannot teach according to a clear-cut model. Police training is about equipping the students well so they can generally make sensible decisions in the many different situations they find themselves in as police officers.*²³

Children and other relatives are not an independent topic at the Police Academy, but are included in the teaching in various contexts and in different subjects.²⁴ In psychology classes work is done on conflict resolution which, among other things, is about those situations where children are present in the home in connection with an arrest.²⁵

The Danish police's basic education is built up on an interrelationship between theory (school) and practice (practical training). Both at the academy and during practical training, the police students are under a great deal of observation. The teachers at the academy evaluate the individual students at joint meetings and a review of the students' efforts also takes place at the practical training locations.²⁶ This also applies

²² 'Belfast Declaration', adopted at 'The International Association of Youth and Family Judges and Magistrates' XVII 'World Congress' in Belfast, Northern Ireland held on 27 August – 1 September 2006, see point 9

²³ B2, see Smith and Jakobsen (2010) as above

²⁴ B2, as above

²⁵ B1, as above

²⁶ B3, as above

to the way in which they handle children: 'If they are not good at it, they are told that there is something they need to work on and that is something we are told about immediately', explains an assistant detective who teaches police theory at the Police Academy.²⁷

The tuition, which is directed towards children as relatives, is based on various cases, for instance, a great deal of situation games (role-playing games) are included in the teaching. For example, this could be an arrest situation where work is done on the many, very different aspects the police need to handle, for example, safety of those involved and themselves, complying with various rules and the way in which to tackle relatives. In connection with these situation games, the students themselves and the teachers and – in rare cases – actors play the parts. The Police Academy also has good experience in involving maladjusted children of 12 to 16 years of age. Young children do not participate in these situation games, so in relation to younger children, the basis is in theory where, for example, the question is asked: 'And what would you do then, if an 8-year-old girl was standing next to the person?'²⁸

With regard to the police duty to inform, the teaching at the Police Academy is that the municipality must notify in all situations where the circumstances in the family give rise to an assumption that the children may have need for special support. There is also tuition in which there are signals the police officers must take notice of, for example, suspicion of neglect of the child, violence against the child or that the remaining relatives are, for one reason or another, unable to take care of the child.²⁹

In the Danish Institute for Human Rights' questionnaire survey, however, only 24 per cent of the responding police officers feel that they have received a good education in handling children as relatives, for example, in connection with an arrest. All of 68 per cent placed a check mark in the option: 'Children as relatives played a very small or no role at all in my training'. This says something about the participating police officers' perception of the training they have received, but it does not necessarily reflect the training that takes place today. According to the Police Academy, there is currently more focus on the relatives and, especially, related children.

Many responses in the survey also reflect that the handling of children is something that is learned especially through experience. For example, a deputy assistant commissioner is of the opinion that it is only when 'you are in practical training that you learn to handle children as relatives', while it is not 'something you learn in school'.³⁰

²⁷ B3, as above

²⁸ B2. Police students come to interact with the younger children in another context, as younger children are often involved in teaching where they are to act as witnesses. The children witness something and the police students have to question them afterwards to learn how to question children in an appropriate manner

²⁹ See the Police Academy's textbook in the subject, psychology: Bjarne Frøslee Ibsen, *et al.*: (2008) Police psychology Copenhagen, p. 105-116. The chapter concerns neglect and assault of children and pages 113-116 concern specific circumstances for notification to the social authorities. Moreover, the individual teachers use their own teaching materials. In the subject, police theory, the theme is included, for example, under different topics: On reports (PG1), domestic disturbances (where the social report is explicitly handled) as well as in Police Theory IV, which concerns children and youngsters. Source: The Police Academy and the Communications Division, National Police

³⁰ Deputy Assistant Commissioner Z (police), see Smith and Jakobsen (2010) as above

2.6 Arrests where the child is present – the children's experiences

The circumstances around arrests are very different, and it is naturally also very individual what children, who are present, experience when their father and/or mother is arrested and how the experience affects the children. When 10-year-old Cherie's father was arrested, it was an unpleasant experience but it took place quietly and calmly and Cherie explains that the two policewomen were kind.³¹ But other children have had very different experiences.

According to the police, the majority of arrests fortunately progress without drama. As the leader of the police criminal preventive division in Copenhagen explains: 'The majority of the arrests are calm – you chat a little and the man understands to go voluntarily'.³² It is, however, difficult to evaluate whether this assessment is correct, since we are unfortunately not familiar with material which verifies or elaborates on this issue.

In any event, there are – also according to the police – situations where things can develop very violently: 'If we suspect a person of very serious things, we don't, for instance, wait for the door to be opened. And if the suspect is armed or has drugs in the house, it can be a very violent experience'.³³ A chief superintendent in Copenhagen explains that the violent arrests are often those where drugs are involved: 'The father perhaps tries to lock himself in the bathroom to flush the drugs down the toilet and the police have to break the door down and handcuff him. This is not nice for the children to see'.³⁴

A family therapist who works in the so-called 'Family House' in the Danish Prison Service's halfway house, Engelsborg, has spoken with children who have told her about very violent arrests:

*There are children who tell about how they were sitting and eating dinner when the door was broken down and six uniformed officers marched in and handcuffed their father. This is not an image that is easy to let go again. It stays with them permanently.*³⁵

Some of the things the children point out, in particular, in their accounts about the arrest of their parent or an investigation, is the police arrival (that the police arrive with sirens wailing, that the door is kicked in) and that many officers arrive, and perhaps also with dogs. A boy, who was scarcely 7 years old when his father was arrested, tells:

So I got home the same time the police arrived. There were four officers from the police [the CID] with turnout and then I also arrived. So my mother said that she wanted to

³¹ Cherie tells about the arrest in the film 'Et hul i himlen' 2007 by Dorte Høeg Brask. Cherie also tells her story on the DVD: 'Dad in Prison' with the Prisoners' choir, the Children's choir and Peter Mygind. 'Dad in Prison' can be purchased/forwarded for free to children who have a parent in prison, see: http://www.fangekoret.dk/ovrige_udgivelser.html

³² B6 (With the launching of the film 'Et hul i himlen – når mor og far er i fængsel' (A hole in the sky – when mum and dad are in prison) and the debate on prisoners children, 15-11-07 in Politikens Hus)

³³ B6 (With the launching of the film 'Et hul i himlen – når mor og far er i fængsel' (A hole in the sky – when mum and dad are in prison) and the debate on prisoners' children, 15-11-07 in Politikens Hus)

³⁴ B4, see Smith and Jakobsen (2010) as above

³⁵ A4. In the Prison and Parole Service's halfway house, Engelsborg, residents can live in the Family House together with their families while they serve their sentences. The family receives help and support in the form of, among other things, family therapy. The children also have individual interviews with a family therapist

know why they were there. They said they had caught my father and if she said no to them coming inside, then they would get hold of the neighbours to witness. So they were allowed to come in. Then I met the dogs and I am scared of dogs, "What's going on?" I said. Then I wasn't allowed to stay at home, I had to go, they said. So I left and played with my mother's friend's daughter (...) But I have wondered many times why they had dogs with them.³⁶

A girl, who was 10 when her father was arrested, also placed importance on their being many police officers and a dog:

We drove up and a man was standing next to the road and there was a dog, and the road was full of police cars and we were stopped. They asked if we lived there (...) And everyone had seen it and asked what was going on (...) I cried and asked my mother "Is this something to do with Dad?" It was. Then they went around looking for him (...)³⁷

When Charlotte, 18 years old, experienced her father being arrested, the door was kicked in and her father was handcuffed in front of her and her sisters:

Suddenly we heard noise downstairs and the door was kicked in. There were officers everywhere. Eight in all, and dogs that barked. Our little sister was sleeping and she woke up. So my father was there and they put the handcuffs on him and we started crying. There was an officer who said that we should say goodbye.³⁸

Charlotte also underlines the searching of the house as a terrible experience: 'Afterwards, all the furniture was overturned. The drawers pulled out and clothes were all over the place'.³⁹

It is understandable that the searching of the home, especially the children's own bedrooms, feels very intimidating to witness, or to come home to. Carina, who was 16 when her father was arrested, told her story to the daily newspaper, "Information":

The officer said that we had to leave the room so he could check it for drugs. When we were on the way out of the room, he opened my drawers and began throwing my underwear, among other things, all over the place. It was so insulting I felt as if I was a criminal.⁴⁰

After the arrest, Carina and her siblings went home to their mother and their mother's boyfriend. When she returned home the next day to clean up in the house, it all came back again: 'It looked a lot worse than I thought. Every time I saw a drawer, I remembered how they were pulled out the day before'.⁴¹

The leader of The Criminal Prevention Division in Copenhagen Police explains that searches cannot be avoided when looking for evidence. Neither can the children's private possessions be omitted: 'We have to search the children's rooms as well. The teddy bear could be a good hiding place'.⁴²

³⁶ Christensen, E. (1999) Forældre i fængsel – en undersøgelse af børn og forældres erfaringer, Copenhagen: Socialforskningsinstituttet p. 38

³⁷ As above

³⁸ According to Charlotte's account on the website: <http://www.faengsel.com>

³⁹ According to Charlotte's account, as above

⁴⁰ Information 02-05-08: 'When the innocent are punished'. Carina's and Charlotte's stories have certain similarities, but by all appearances, this is not the same story

⁴¹ Information 02-05-08: 'When the innocent are punished'

⁴² B6 (With the launching of the film »Et hul i himlen – når mor og far er i fængsel« (A hole in the sky – when mum and dad are in prison) and the debate on prisoners' children, 15-11-07 in Politikens Hus)

The violent arrests can, however, be experiences the child will never forget:

Impressions of the arrest are burned on the child's mind and are likely to return at night: the violence of the police, the yelling and crying of the mother, the faces of curious neighbours and, above all, the way the father was removed in handcuffs or with a bag over his head, are sensations the child will never forget.⁴³

Naturally, there is a difference to how arrests take place, but regardless of how the arrest progresses and what the children experience, the arrest can be experienced as frightening and make an impression. An assistant detective, who has many arrests behind him, describes it thus: 'Children are always anxious, regardless of whether it is a calm or violent arrest. You can always see the anxiety in their eyes'.⁴⁴ Deputy Manager and leader of counselling at Børns Vilkår explains that as adults we forget to see the arrest from the children's perspective:

Adults talk about a 'violent' or a 'peaceful' arrest. But the children will always experience an arrest as dramatic. It is always traumatic that someone comes and removes a parent. It is important that we think in the child's perspective. Children find arrests much more frightening than we can image, because we see it with our adult eyes.⁴⁵

2.7 The children's reactions

If the children's accounts of their experience of how their mother or father was arrested are compared, there are certain reactions that repeat in the stories. In particular, children tell how they started crying and that they were scared. There are also stories showing that they have stood slightly lost and watched while the arrest took place.

The children's accounts match quite well to the police perception of how children react to parent arrests. In the Danish Institute for Human Rights' questionnaire survey, the majority of the participating police officers responded that they experience children, who remain passive and calm (53 per cent); children, who behave as if they do not understand what is happening (53 per cent); children, who cry (47 per cent) and children who cling to their mother or father (32 per cent).

Some police officers point out that it is difficult to say something general about the children's reactions: in particular, children's reactions depend on the situation and their age. Some officers are of the opinion that the younger children are the most passive, perhaps because they understand least what is happening and are therefore less afraid. One police sergeant finds that there are many children who do not understand what is going on and elaborates: 'I don't believe that they think it's the police officers, but just that there are some people who want to take dad/mum with them'.⁴⁶

According to the survey, many police officers experience children who in arrest situations are friendly towards the police (38 per cent) or afraid of the police (44 per cent). That they react by being friendly does not, however, mean that they 'have a good relationship to the police', indeed the opposite would be natural in many

⁴³ van Nijnatten, quoted in Codd, H. (2008) *In the Shadow of Prison: Families, imprisonment and criminal justice*. London: Portland p65

⁴⁴ B3, see Smith and Jakobsen (2010) as above

⁴⁵ E10, as above

⁴⁶ Police Sergeant S (police), see Smith and Jakobsen (2010) as above

situations – although one has to bear in mind that some children are relieved when a parent is imprisoned. Quite a few police officers also find that some children react in a particularly hostile way (18 per cent). In a chief superintendent's words, it can 'be a negative experience for the child to see the police in action'.⁴⁷ One can imagine that there is anger towards the police that can grow and manifest itself in unfortunate behaviour later on in life.

How the children experience the police is of course, to a large degree, connected to how the police handle the situation and this helps to emphasise how important it is that the individual police officer ensures that the arrest takes place in an appropriate manner, so the authorities are not experienced as dangerous and as the children's enemy. However, this also depends on the way in which the arrested person and other relatives tackle the situation and relate to the police. An assistant detective tells that he has one experience of a child as a relative that still affects him because the situation came to a head and the child was involved in a very unpleasant manner:

Once, many years ago, I had to carry out an arrest together with another officer of a female drink-drive offender. Unfortunately, she managed to get into her apartment before we could get hold of her. When we rang the doorbell, she opened the door and was clearly very intoxicated. Her husband, who didn't appear to be under the influence, stood behind her with their almost 5-year-old son. We asked the husband to go into another room with the child and explained: 'We just need to chat with your wife and take her down to the station for a blood test. It won't take that long'. But he refused and remained standing where he was.

The woman did certainly not want to go to the station and began kicking and hitting. She was a very heavy-built and strong lady and very infuriated, so we couldn't get her to come with us just like that. We continued to urge the husband to leave with the child, but he refused. The situation with the woman developed and it all ended very unfortunately by having to get her to lie down and almost have two officers sit on top of her out in the stairwell. And if that wasn't enough, the husband wouldn't go away with the boy; he didn't even have a proper hold on him. Suddenly, the boy attacked me and beat furiously on my back while shouting, 'Get away from my mother! Get away from my mother!' I will never forget the boy's eyes and I often wonder where he is today, how it has affected him and what he thinks about the police and about the episode. It's almost 28 years ago, so he is an adult man now.⁴⁸

2.8 Police handling of arrests when children are present

The police have many tasks in connection with an arrest. They must arrest the suspect or suspects and ensure they gather the evidence, and they need to focus on the safety of themselves and of those who are present. The police are also responsible for how the arrest is handled in relation to the potential that children may be present.

As mentioned earlier, the legislation on this area is not detailed in precisely this respect and does not involve the children's perspective. The only aspect stated in the Administration of Justice Act is that 'arrests are conducted as gently as circumstances allow', but this principle is, not surprisingly, first and foremost directed towards the

⁴⁷ B4, see Smith and Jakobsen (2010) as above

⁴⁸ B3. Subsequently, the assistant detective has experienced other unfortunate situations with children as relatives, but precisely this experience has marked him deeply. According to him, it is enough because he was a young and inexperienced officer that time and because, as a policeman, one has to become a little more hardened with time. See Smith and Jakobsen (2010) as above

arrested person.⁴⁹ Some police officers point out that it is difficult to legislate more specifically 'because this is about vastly different circumstances from time to time'.⁵⁰ And yet it is puzzling that certain rules do not exist or at least instructive guidelines on how the police should act when children are present at arrests. As a consequence of the lack of rules and guidelines in relation to police handling of arrests when children are present, it could be feared that far too much depends on whether the officers who conduct the arrest 'accidentally' focus on and understand how they handle the children who are present. A chief superintendent explains: 'The police can be very focused on the task, by which the attention to the children present depends, to a high degree, on the individual officer's empathy and sense of the situation'.⁵¹ A police sergeant writes that there should be 'More focus and reference to "Inmates" children' from senior management in the police districts. Set procedures that MUST be complied with'.⁵²

However, the responses from the DIHR survey generally indicate that many police officers are aware that the police handling of parental arrests plays an important role in relation to the experience of the children who are present. Of those asked, 82 per cent responded that they found that the police, generally speaking, have a great deal of focus on the children in connection with the arrest of parents. The issue, which the majority emphasise as crucial, is whether the police knew beforehand that children would be present. Here, of those asked, 35 per cent responded that this can be of importance to the police awareness of the children.

As mentioned previously, the handling of the arrest situation in relation to the arrested person's children is very much up to the individual police officer, and in certain areas there is apparently no set practice and evidently different approaches. Some officers – but not all – check the National Register of Persons before the arrest.⁵³ According to the survey, it is not standard policy for the police to use this knowledge to conduct a planned arrest at a location or at a time when children are not present: 26 per cent responded that children's possible presence does not play any role in where and when the arrest takes place, just as 38 per cent stated that it only plays a less important role for the planning of an arrest even though many responses indicate that it is best that the arrest takes place at a location where the children do not witness it. A deputy assistant commissioner, who responded that children are not part of the considerations, elaborates: 'The planning is according to when it is convenient with regard to deadlines – we may only detain people for 24 hours. When planned – all aspects must come into play equally. Children are not one of the aspects'.⁵⁴

For those police officers who responded in the survey that the presence of children is not included in the considerations is not necessarily synonymous with the action being taken with the basis in the children's best interests. A deputy assistant commissioner elaborates that, for example, children in the home is something which, to a high degree, is included in the planning because: 'It secures the action considerably if children are present'.⁵⁵ Here, this really has nothing to do with seeing things from the children's perspective, but rather that they are used in the police work. This method – that the police use the children to pacify the person who is being arrested – is described by a mother who tells that the police arrested her husband in the apartment

⁴⁹ The Administration of Justice Act § 758

⁵⁰ B6, see Smith and Jakobsen (2010) as above

⁵¹ B4, as above

⁵² Police Sergeant W (police), see Smith and Jakobsen (2010) as above

⁵³ B3, B4, B5, see Smith and Jakobsen (2010) as above

⁵⁴ Deputy Assistant Commissioner Z (police), see Smith and Jakobsen (2010) as above

⁵⁵ Deputy Assistant Commissioner V (police), see Smith and Jakobsen (2010) as above

in front of her and her three children, which was a very intense experience for the children. A concerned upstairs neighbour heard the noise and offered to take the children upstairs, but the police would not allow this. She explains:

Thirty minutes earlier I was walking with the pram and the twins right past the bushes where it transpired that the policemen were hiding up to the arrest. They could have just kept us back quietly and calmly, and then go into the apartment to arrest Claus. But instead, they waited until we were all at home.⁵⁶

On this basis, one can naturally not know the police grounds for acting as they did in the case concerned, but the above mentioned questionnaire response states that the children could have played a kind of preventive role. The opposite can, however, also be maintained – that parents may use their children ‘as shields’. Compare, for example, the assistant detective’s account of the female drink-drive offender whose husband would not go away with their 5-year-old son and the section below on parents’ and other relatives’ handling of the arrest situation. In both cases, regardless of whether it is the police or the parents themselves who are using the child the situation must be characterised as immensely problematic in relation to the needs of the child.

There are, however, a number of precautions which the police generally take when children are present at an arrest. Everyone, apart from one, responded that they try to conduct the arrest as calmly as possible.⁵⁷ According to a predominate part of the participating police officers’ responses, police officers are generally aware of the fact that someone must take care of the children during arrests of parents: 75 per cent of the participating police officers responded that as far as possible, they try to get another parent or other relatives to leave with the child; 63 per cent responded that they ensure that an officer specifically attends to the child and possibly other relatives.

A seasoned deputy assistant commissioner, who is currently section leader at the Police Academy, also tells that previously:

as a rule, an officer had time to visit the family again to do a little follow-up, but there is no real time for that today. Of course, this depends on the individual officer, but I do not believe that this is something that is practiced to any great extent. It is neither a requirement and nor is it our job. But there are very committed officers who do it.⁵⁸

2.9 Police communication of information to relatives in connection with arrest

According to the survey by the Danish Institute for Human Rights, information provided by the police to relatives in connection with an arrest comprises verbal information and/or handing out of calling cards. Four of the responding participants write in the comment field that they also give information about contact to a social worker. The procedures here are not standardised either.

At the Police Academy, it is said that the police can rarely say anything specific to the relatives because in reality they do not know how long the arrested person will be detained. At the most, they must give a rough assessment. Moreover, it is emphasised that neither is it always possible to give information and instructions, even though it is

⁵⁶ Interview with Lis Andersen, mother of three children whose father is in prison. Avisen DK, 12 April 2007

⁵⁷ In the Danish Institute for Human Rights’ survey

⁵⁸ B2, see Smith and Jakobsen (2010) as above

best that the police do so. This may be about insufficient time and it may be about a violent arrest where focus is more one-sided and is about 'ending the situation and getting the guy to go along'.⁵⁹

The Danish Criminal Preventive Council has compiled an information folder in cooperation with the Prison and Probation Service called, 'In prison – What about the children?'⁶⁰ which concerns children's needs in connection with imprisonment of a parent and provides information to parents about where they can find help and answers to various questions. The folder is available at the visiting divisions in the Prison and Probation Service's institutions,⁶¹ but it would be useful if it was also given out in connection with arrests so the information is not initially received when visiting a detention centre or prison for the first time. Unfortunately, this does not indicate that the giving out of information material to relatives in connection with arrests occurs to a greater extent. At any rate, only one police officer responded in the survey that he or she hands out information material to the relatives in connection with an arrest; the respondent does not indicate what kind of information material this is. Another police officer indicated that there has supposedly been some information material once, but does not think that it is handed out much. There are divided opinions, but a predominant positive attitude (65 per cent) is that the police could hand out the information material to relatives in connection with an arrest.

2.10 The parents' and other relatives' handling of the arrest situation

A high number of police officers express frustration about parents' and other relatives' behaviour in connection with arrests. Many of the police officers participating in the survey mentioned that they experience parents who handle the situation very badly in relation to their children. It is clearly the police experience that parents play a very important role in regard to whether the arrest takes place in a quiet and calm manner, and to how the children experience the arrest. An assistant detective explains that:

*the children react very much based on the experience the adult has with the meeting with the police. If the adult is quiet and calm, then the children are as well. Conversely, if the adult reacts violently, then the children react by crying and being fearful of the unknown.*⁶²

A deputy assistant commissioner finds that especially intoxicated or 'drugged-up' parents dramatise the situation.⁶³ One police sergeant explains that: 'The children often become little "parents" who have to act like an adult because the adults are unable to'.⁶⁴

Another police sergeant tells a sad story about a 12-year-old girl who contacted the police:

I had been out and arrested a father – domestic dispute – where I spent a great deal of time on the child. She was the one who called, so her mother thought she was a 'stupid girl'. The mother wouldn't talk to the sobbing kid – 12 years old. (...) I often think about

⁵⁹ B3, see Smith and Jakobsen (2010) as above

⁶⁰ The pamphlet does not have a year specified, but according to A2 it was published in 2005

⁶¹ A2, see Smith and Jakobsen (2010) as above

⁶² Assistant Detective U (police), see Smith and Jakobsen (2010) as above

⁶³ Deputy Assistant Commissioner V (police), see Smith and Jakobsen (2010) as above

⁶⁴ Police Sergeant S (police), see Smith and Jakobsen (2010) as above

*that, even though it's 12 years ago.*⁶⁵

Fortunately, there are examples to the contrary – that parents react by attending to their children in the situation: 'I have also experienced several times that the parents are very cooperative and aware of their children. They often have a suggestion to a solution if the ones we suggest don't suffice'.⁶⁶

2.11 Arrest when the child is not present – do the police check whether the arrested person has children?

What happens when a parent is arrested while the child is not present? Do the police know that they have arrested a mother or father with under-aged children and, in such cases, how do the police use this knowledge? Do relatives always get information that the arrest has taken place? This last question, as already described, was an area in which the CPT criticised Denmark, as a number of arrested persons were apparently prevented from informing their relatives – in consideration of the police's investigation but without this being noted and processed in a correct manner. If such information is not given to relatives within a short period of time, this can naturally be a problem, for detained people and their children.

In the Danish Institute for Human Rights' survey, 62 per cent of the participating police officers responded that they ask if the arrested person has children and, in such cases, where they are. Some of the police officers asked in the survey, who did not enquire had, however, checked this in the National Register of Persons beforehand. Others elaborated that an arrested person is not always asked if he or she has children because: 1) 'Not all colleagues are equally aware of possible children',⁶⁷ 2) that it depends on the situation⁶⁸ and 3) that an arrested person will draw attention to the fact of he or she has children.⁶⁹

The police are not required to ask if an arrested person has children, and it does not necessarily have to be noted anywhere, just as action is not necessarily required to be taken. A chief superintendent tells that it would be written in the day report if an arrested person has children and that the day report is read by the criminal preventive division, which assesses what should occur in that connection; and in other situations a social report is written which is forwarded to the municipality.⁷⁰ In the survey, the police officers were asked whether they would contact the social authorities if they can see that children live in the house but the arrested person denies this. Only slightly less than half (47 per cent) responded with a clear 'yes'.

2.12 The parents' information to the child about the arrest

The police explain that normally neither the social authorities nor the police inform the child when the child has not been present at the arrest of the child's mother or father. Most often, the parents or other relatives give the child an explanation.⁷¹ There are however situations where the adult relatives are not informed, and consequently

⁶⁵ Police Sergeant U (police), see Smith and Jakobsen (2010) as above.

⁶⁶ Deputy Assistant Commissioner V (police), see Smith and Jakobsen (2010) as above.

⁶⁷ Police Sergeant W (police), see Smith and Jakobsen (2010) as above

⁶⁸ Detective Assistant V and Detective Assistant Z (police), see Smith and Jakobsen (2010) as above

⁶⁹ Detective Assistant T and Police Commissioner T (police), see Smith and Jakobsen (2010) as above

⁷⁰ B4, see Smith and Jakobsen (2010) as above

⁷¹ B3, B4, see Smith and Jakobsen (2010) as above

children are not informed either.⁷²

In many cases the children are given stories instead of the truth, which most often is because the parents want to protect their children. This can have a negative consequence because children can feel that the situation is not what they are being told and they become even more troubled. It can also contribute to creating a relationship of distrust to the parents. Diana experienced this in relation to her mother who told her that her father was in Germany, but Diana was very well aware that this was not true:

I cannot blame her for wanting to protect me, but I could just have used the truth for a number of things. Then I wouldn't have to tell lies at school and perhaps it might have been easier to talk about it at home (...) When she tells me something, I automatically think: Is that really true? I will always have a feeling that she let me down by not answering the questions that were so deep inside me. It was really about my father and not some distant uncle or other.⁷³

2.13 Involvement of the social authorities – social reports and the social 24-hour service

Pursuant to the Social Service Act, as a public authority, the police have the duty to report.⁷⁴ As already described, it is the attending officer who, in connection with an arrest, assesses whether the circumstances in the family provide an assumption that the children need special support and that the social authorities must, therefore, be notified. In other words, the social authorities are only contacted if the attending officer assesses it as necessary.

If the police want to inform the social authorities about a child who they believe needs special support, they can notify this through a social report. If the police assess that the children have an immediate need to have special provisions made, they can contact the social 24-hour service.⁷⁵

In the DIHR survey, the majority of police officers responded that in those cases where children appear to be neglected, they would either contact the social 24-hour service (76 per cent) or notify the municipality through a social report (likewise, 76 per cent). If the home is neglected and disorderly, according to the survey, many police officers would also contact the social 24-hour service (53 per cent) or inform the social authorities through a social report (62 per cent). But, if one confers to the response percentages, there is clearly not complete agreement about this.

By far, the majority of the officers asked would contact the social 24-hour service in cases where the child would otherwise be left alone because both parents are being arrested (91 per cent), or in cases where the arrested person is alone with his or her child and other relatives cannot be contacted (82 per cent). In those cases where the

⁷² See for example CPT's criticism of Denmark, discussed in the legal section in this chapter

⁷³ Grøftehauge, M. (2004) Fangebørn, Århus p.19 ff

⁷⁴ Act on Social Service § 153. Cf. also the Service Act § 35: The police shall notify the municipality in connection with an arrest if they have knowledge of circumstances that provide an assumption that a child under 18 needs special support

⁷⁵ Public employees have a duty to inform if they surmise that a child under 18 needs special support. Cf. public employees' duty to inform which is established in executive order no. 1336 of 30 November on the duty to inform the municipality according to the act on social service § 1, no. 1. The executive order has legal basis in the service act, § 153. See also <https://www.retsinformation.dk/Forms/R0710.aspx?id=113910>

remaining relative, for some reason or other, is unable to take care of the child, 85 per cent would contact the social 24-hour service. This particularly concerns situations where the remaining relative is under the influence of drugs or alcohol or appears to be mentally unbalanced or ill.

The police must and should naturally contact the 24-hour service in the cases mentioned, where a suitable person does not remain behind to take care of the children. But, even though the responses in the survey indicate that the police do this in, by far, the majority of cases, it does happen, unfortunately, that this is not followed. As a police sergeant wrote in the questionnaire: 'Many years ago in Copenhagen in connection with an arrest, I had to entrust the young children to an extremely drunk mother. I cannot remember why the social authorities were not involved'.⁷⁶

Neither are there consistent responses in the questionnaire as to how often a situation is of such character that the police contact the social 24-hour service. In the questionnaire's comment field under the question: 'In which cases do you contact the social 24-hour service?', a police superintendent wrote: 'Many cases actually',⁷⁷ while a deputy assistant commissioner wrote: 'Rarely. It has to be really bad'.⁷⁸ This could indicate that practice in the area is also varied here and depends on the individual officer. Just as important, is that the police officers do not necessarily have the professional competence to assess whether and when children require special help.

2.14 Children who are left on their own

Police officers tell that when the social 24-hour service is contacted, it is standard practice that an officer remains at the location and waits for the personnel from the 24-hour service to arrive. If, for one reason or another, this is not possible, for example, because the situation in the home is so bad or because there is no time or possibility for a police officer to wait together with the child, the child is taken to the station where the social authorities can collect him or her.⁷⁹

As an alternative or supplement to contacting the social authorities, some police officers stated that they would try to contact family members in those cases where both parents are arrested or the arrested parent is alone with the child.

In those situations as well there are, unfortunately, cases where the children are not properly taken care of. A family therapist from the halfway house, Engelsborg's Family House, tells about a boy who was left alone after his mother was arrested:

He said, 'Mum was frying meatballs when they came and she was given just three minutes to clear it away and then they handcuffed her. She asked, 'But what about Mikkel?' and one of the officers said, 'The social 24-hour service will pick him up'. I didn't know what that was, so I was pretty scared and then I sat all on my own and waited for them to come.'⁸⁰

There are also instances where older children have been left alone without the police having contacted the social authorities at all (or family members). Malene, Carina and

⁷⁶ Police Sergeant S (police) about an experience with children of arrested persons who have made a particular impression on her. See Smith and Jakobsen (2010) as above

⁷⁷ Police Commissioner T (police), see Smith and Jakobsen (2010) as above

⁷⁸ Deputy Assistant Commissioner Z (police), see Smith and Jakobsen (2010) as above

⁷⁹ B2, B5, B6, see Smith and Jakobsen (2010) as above

⁸⁰ A4, see Smith and Jakobsen (2010) as above

Tenna who, at that time were 18, 16 and 14-years-old, respectively, experienced that the police contacted neither their mother nor the social authorities when their father was arrested. The arrest took place in the home and the girls were at home. Apparently, the police did not inform them of what would happen and did not even ask if they had somewhere they could go or someone who could come and take care of them. On their own initiative, the three girls took a taxi to their mother (who lived 30 kilometres away).⁸¹

This is obviously not an unusual situation. Investigation leader, Kenneth Vesth, explains: '(...) If there is a 15-year-old, it may be that we don't do anything more, but if we see a cot, then of course we make a call'.⁸² According to the KRIM organisation, it has happened many times that children have been left behind and the police have not told them where the mother or father is going or when they will return.⁸³

As mentioned, the police are not obliged to ask if an arrested person has children and, as previously described, only half of the police officers ask if the arrested person has children.

2.15 The social authorities as help and support after the arrest

There are critical voices in children's specialist organisations who find it inappropriate that it is up to the individual officer to assess whether the social authorities should be contacted in connection with the arrest of persons who have children. According to Børns Vilkår, the police and other public authorities' heightened duty to report is too weakly defined and sends unclear signals:

*Myths exist of what neglect is: If the mother is not drunk and if things appear to be clean and the children are nicely dressed, then the assessment is often that everything is alright. A lot of children are lost in this way. There has to be a much closer cooperation between the police and the social authorities, and the social authorities should be responsible for the assessment of which initiatives must be taken in relation to the arrested person's children.*⁸⁴

The National Council for Children also wishes to have a set practice introduced where the social authorities are called on every time a parent is arrested.⁸⁵

The DIHR survey asked: 'Do you find that the communication and cooperation between the social authorities and the police works well when it comes to safeguarding of children who's mother and/or father is arrested?' It is apparent from the police response that, among the participating police officers, 76 per cent found that the cooperation, generally speaking, functions well. For those participating from the social authorities, the figure was only 56 per cent, while 39 per cent of the police officers and 36 per cent of the social workers would like a closer cooperation and/or that the police and the social authorities could share information to a higher degree. Both the police and the social authorities, in particular, are also looking for precisely greater information sharing when they were asked how the cooperation could be improved. One must assume that, to a high degree, this question would depend on whether the police and the social authorities assess that the local SSP work functions

⁸¹ Information, 2 May 2008

⁸² As above

⁸³ As above

⁸⁴ E10, see Smith and Jakobsen (2010) as above

⁸⁵ Information, 2 May 2008

(cooperation between social authorities, schools, and the police).

The police comments reflect certain differences in their experience of the social authorities. For example, one police sergeant wrote, 'Some times it seems as if the municipality thinks: The person concerned is now under the state's (Prison and Probation Service's) organisation and as a municipality we are not interested in helping him/her'.⁸⁶ On the other hand, a deputy assistant commissioner wrote: 'The social services are on their toes as far as children are concerned'.⁸⁷

The social authorities criticise some of the police for not informing enough. Among other things, they are looking for, 'More social reports from the police, reports on the parents even though they live in the 'expensive' neighbourhoods'.⁸⁸ Moreover, it was commented: 'Social reports some times arrive with great delays, which makes follow-up difficult'.⁸⁹

A mother with young children tells about the time the children's father was arrested:

*It would be good if there was someone to talk to (with the arrest). But it is important that there is someone who can explain what will happen. Perhaps it's easier for others, but I knew nothing about arresting and prisons. Everything I know now I have learned through experience. Many times I have sat and developed a headache from thinking because I couldn't figure it out.*⁹⁰

When one hears about adult relatives' feeling of helplessness on top of the arrest, about the children's unfortunate experiences in connection with parent arrests and the social workers' and police officers' desire for better information sharing, one can wonder why the police do not contact the social authorities to a much larger extent in connection with the arrest of a parent. There are two factors, in particular, that make this difficult. Firstly, the police have a non-disclosure obligation, which may only be breached if they see grounds to report. Among other things, it concerns protecting the right to privacy. Secondly, many arrested persons and adult relatives decline the involvement of the social authorities. The social authorities can be perceived as a control function, not as a help. As one relative explains, 'You know very well that the social authorities must not get past your door because you'll never get them out again'.⁹¹

In SAVN (a relatives' of prisoners organisation), this picture is recognised: the parents express immense concern that the social authorities will commence a social case or that forcible removal could be a possibility.⁹² At the Police Academy, the problem is also recognised and police officers' experience is that relatives often request police not to involve the social authorities.⁹³

According to the DIHR survey, the participating social workers are also aware of the negative preconceived attitudes to the social authorities: 44 per cent wrote that they have experienced families affected by imprisonment who have a preconceived idea

⁸⁶ Police Sergeant W (police), see Smith and Jakobsen (2010) as above

⁸⁷ Deputy Assistant Commissioner Z (police), see Smith and Jakobsen (2010) as above

⁸⁸ Social worker Y (police), see Smith and Jakobsen (2010) as above

⁸⁹ Section Leader I (the social authorities), see Smith and Jakobsen (2010) as above

⁹⁰ Christensen (1999) as above p95

⁹¹ C3, Smith and Jakobsen (2010) as above

⁹² E4, see Smith and Jakobsen (2010) as above

⁹³ B2, see Smith and Jakobsen (2010) as above

that the social services represents intrusive control and, likewise, 44 per cent have experienced families affected by imprisonment who have preconceived ideas that the social services will remove the children from the home. Only slightly more than half, 60 per cent, have experienced that families affected by imprisonment had a preconceived idea that the social authorities would be able to help them.

2.16 Conclusion and summary

Seen from the viewpoint of children, there are a number of potential problems and specific issues that are especially associated with the arrest of parents. Not least, this applies to the question of whether the children are witness to the arrest and how, in such cases, this progresses. If the children do not witness the arrest, it is crucial that relatives are informed about the arrest so that there is the subsequent possibility of informing the children as well. Next, it is crucial whether – and how – the social authorities are contacted in connection with the arrest of persons who have children.

On the whole, the police confirm and, for that matter, so do the social workers, that it can be a very problematic and difficult experience for children to experience the arrest of their parent. Many children do not understand what is going on and many cry and cling to the arrested parent. In the light of the experiences and data presented in the preceding text, it is then not strange that researchers in other countries have assessed that in some cases it can be damaging and perhaps decidedly traumatising for children to experience an arrest of a parent.

The preceding text indicates, however, that the majority of police officers have a fundamental awareness of the children's situation and exposure in this area even though the majority of those asked, found their training insufficient in this respect. By all appearances, however, there is somewhat more focus on detainees' children in the current training at the Police Academy. Nevertheless, it seems that police practice varies on several areas; for example, when it comes to the question of when the social authorities are contacted. It is unclear exactly when this takes place and there are evidently different approaches. In any case, in relation to the provisions of the Convention of the Rights of the Child and in relation to the best interest of the child, it must be noted that the police do not possess the same competence to assess the children's situation and needs as a social service has. Therefore, formal reporting procedures should be established whereby the social authorities are informed when a parent is arrested and put in remand custody. Furthermore, it should be ensured that the remaining relatives are informed of the options to obtain help.

3. Pre-trial imprisonment – a problematic period of transition

In a number of areas, circumstances for children whose parents are in remand custody are very similar to those encountered by children whose parents are serving a sentence. Consequently, a number of the important issues in this context – such as the question of whether or not officials of the Prison Service are focused on children of prisoners; control procedures in connection with prison visitation; the quality of the visiting facilities and children's experience of visits to the Prison Service's institutions; and the relevant legal issues concerning imprisonment of parents – will largely be dealt with collectively under separate headings in a later chapter. There are, however, certain circumstances which exclusively or particularly pertain to remand in custody, which may have great significance for children. Below, particular focus will be given to

the unique situation arising for a family and the involved children when a parent is in remand custody.

3.1 Pre-trial imprisonment of parents

Danish, as well as international, research indicates that remand custody represents a particularly difficult period for families.⁹⁴ The interviewed partners of prisoners in Else Christensen's Danish survey relate how they found themselves in an unfamiliar situation in connection with the remand in custody. In practice, they experienced becoming single mothers as well as losing one of the family's sources of income – usually the largest. The families' financial difficulties were described as 'massive'; one consequence being that these families were forced to cut down on expenses, move to cheaper housing, and seek supplementary employment. Several were also forced to seek financial aid towards rent and daily exigencies from social authorities.⁹⁵

It comes as no surprise that the stress usually afflicting the parent left alone will also affect the children.⁹⁶ For partners who find themselves in this situation for the first time, it is particularly overwhelming that they do not know the rules and have no experience that is immediately useful.⁹⁷ There is a scarcity of information for close kin in connection with detention and remand in custody of their partner/parent; be it information concerning the case – in some instances, the partner does not even know the reason for the remand in custody – nor, is she or he told – or concerning their different rights; for instance, visitation for those in remand custody or financial support. Nor can much help be expected regarding how to deal with the children in this situation. Needless to say, the situation becomes particularly absurd if close kin have not even been notified about the detention – as has been noted, CPT (the Committee for the Prevention of Torture) has found examples of this and has criticised Denmark on this background.

Remand in custody constitutes a transitional period in many ways.⁹⁸ The case is investigated and the outcome remains uncertain. Some believe that the individual remanded in custody will be set free. Others will be anticipating how harsh the sentence will be. The fact that remand custody is often prolonged several times can mean severe tribulation not only for the person remanded in custody, but also for close kin. Marie explains what happened when her ex-husband, Andreas, the father of her three sons, was remanded in custody:

After 14 days he was to appear before a judge, who proceeded to prolong his remand for another 14 days. It went on like this for some time; gradually it was prolonged by 4 weeks at a time. Every time I had to explain to Kristian, my son who was then 7, that in '14 days or in a month, a judge will decide whether Daddy has to go to jail or whether he can be released'. When it was prolonged time after time, I could do nothing but tell him that it had been extended – yet again. All we did was sit and wait. Andreas was in remand custody for 10 months.⁹⁹

For this boy, it was particularly stressful because his two younger brothers knew nothing, and because he and his mother had reached an agreement that if his father

⁹⁴ See Smith and Jakobsen (2010) as above

⁹⁵ Christensen (1999) as above p. 47

⁹⁶ Murray and Farrington (2006) 'Evidence-based programs for children of prisoners', *Criminology & Public Policy*, vol. 5, no. 4 p726

⁹⁷ Christensen (1999) as above p50

⁹⁸ Christensen (1999) as above p48

⁹⁹ C3, see Smith and Jakobsen (2010) as above

received a jail sentence they would have to tell their family, their circle of friends and his school; and he was very nervous about this. The boy, who is now 12, explains it in the following way:

My mother did in fact tell me to prepare myself that my father would probably have to go to jail. It was like spending your time waiting for something that you knew was bad, but you did not know how bad it was (...) every time we thought, now we will be told something, but all that happened was that we had to wait some more.¹⁰⁰

This situation is quite typical and can be particularly troublesome in cases where children are placed in child care. For instance, during a visit to a children's home in 2007, staff related about a boy, Ali, who at that point had spent half a year in the institution, living in uncertainty. Both his parents were in remand custody which was constantly being extended, and therefore the children's home did not know how long he was going to stay.¹⁰¹

As previously mentioned, some children are told a story about where their father or mother has gone when in prison, and later on find it difficult to understand and forgive that they were not told the truth. Dennis, a father who did not tell his daughters the truth when he was in prison, relates: 'As teenagers they have often asked me why I lied to them. I don't know whether telling them the truth would have been better. Maybe, it is difficult to say. In any case, they are disappointed, and one of them still doesn't entirely trust me'.¹⁰²

There are also some parents who admit to the imprisonment but lie with regard to the extent of their criminal activity. A Danish Red Cross employee running discussion groups for children of imprisoned parents speaks of a specific situation that made a special impression: 'One boy of 12 had been told that his father had stolen a trailer. The father got 12 years in prison. The boy was quite able to realise that this didn't add up'.¹⁰³ According to a U.S. researcher, this kind of subterfuge may spur a fundamental feeling of anxiety and insecurity in the children:

Whether these statements are true or false, they dramatically undermine the children's sense of safety and security. If their parents can be picked up and put in prison for doing 'nothing', so can they, so can their mothers, and so can other members of their families. No one is safe. No one is secure.¹⁰⁴

3.2 'You only have yourself to blame'

As has been dealt with previously, imprisonment is typically a very taboo-ridden event which may be associated with shame and stigmatisation. Precisely, and not least because of this, it is of the utmost importance how the involved authorities handle the situation. There is good reason to believe that many police officers, prison officers, and others act decently; yet, unfortunately, it is the case that the families facing imprisonment are not always received in an appropriate manner; for example, when they are seeking help and support; or when they visit the police station or one of the Prison and Probation Service's institutions. Thus, an array of accounts testify to the

¹⁰⁰ C1, see Smith and Jakobsen (2010) as above

¹⁰¹ D4 and D5, as above

¹⁰² C4, as above

¹⁰³ E2, as above

¹⁰⁴ Mazza, C. (2002) 'And Then the World Fell Apart: The Children of Incarcerated Fathers', Families in Society: The Journal of Contemporary Services, vol.83, no. 5/6 p524

fact that among some of those meant to help these families there seems to exist an attitude which, in fact, neglects the crisis that families facing imprisonment are in. Sometimes, the impression is of an attitude that the family – or the adult relative – ‘only has themselves to blame’. This is particularly problematic in the period immediately following the arrest, as has just been described, where the family finds itself in an insecure time of transition and in dire need of support. Not infrequently, these families find themselves in a crisis situation; in precisely this predicament, they may for the first time be met with a ‘you brought this upon yourself’ attitude. This may prove a large practical and emotional problem, particularly during the remand custody period.

3.3 Visitation during remand in custody

During the period of remand in custody a number of special circumstances concerning visits to the prisoner may pertain. This may considerably hamper a sensible contact between the child and the imprisoned parent – both with regard to the extent and nature of the contact. This is particularly true if the person in remand custody is subject to control of correspondence and visits, which entail that police, must supervise visits. In connection with a remand in custody quite singular circumstances obtain which may in several ways prove a problem for any children. All of this will be dealt with in a later chapter concerning children’s visits to prisons and detention facilities.

3.4 Remand in custody – a vulnerable period

For many families forced to deal with remand in custody this proves a long and difficult time, marked by significant uncertainty and many financial and practical problems. For many relatives and acquaintances it is a very confusing period and many do not possess the drive to seek help or support or just do not know how to go about this – and the way that adult relations handle this will also affect the children. The situation is not ameliorated by the fact that many children, especially in this period, find themselves most in need of seeing and experiencing that their father or mother is doing well. Instead, they are not told where he or she is and have no contact whatsoever. For those children who do get to visit their parent in remand custody, this often happens under very restrictive visitation conditions.

The conditions of prisoners in remand custody are in many ways based on the assumption that remand in custody should be for a short period only. But, in practice, this is far from always the case. Thus, in 2007, a full 620 cases of ‘long-term remands in custody’ in Denmark lasted for more than three months.¹⁰⁵ Therefore, it is a very substantial problem that there may be difficulties in maintaining meaningful contact between parents remanded in custody and their children.

4. When a parent is imprisoned - the legal issues

This chapter and the following two concern the situation that arises when a parent is imprisoned, either in the form of remand imprisonment or in the form of serving a prison sentence. This chapter also describes the legal issues relevant to children in connection with imprisonment of their parent or parents. This is applicable in cases of both remand custody and serving a sentence.

¹⁰⁵ See http://www.justitsministeriet.dk/fi/leadmin/downloads/Forskning_og_dokumentation/Rapport_2007.pdf

We will take a closer look, below, at how prisoners' children's interests are balanced in connection with the conviction of parents, the setting of the sentence and with regard to the choice of the place for serving the sentence. The issue of which right to financial support the children and their families affected by imprisonment have will be broached, as well as which legal issues are applicable to children who visit their parents in remand custody or in prison.

4.1 Conviction and sentencing

It can be difficult, and partly inappropriate, to take children into consideration in connection with the setting of the parents' punishment since the offending person and deed must, of course, be the focus of attention. A partner, or a parent, of a convicted person is also, as a rule, an adult person who in principle must be expected to take responsibility for himself or herself, and his or her situation. But what can be done when the relatives are children?

As already mentioned, the UN Convention on the Rights of the Child (CRC) states that the child's best interests must be the primary consideration in 'all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies' (Article 3.1). The Committee on the Rights of the Child has interpreted Article 3 of the Convention precisely in relation to the question of imprisonment and conviction of parents and, on this basis, has recommended:

Where the defendant has child-caring responsibilities, the Committee recommends that the principle of the best interests of the child (art. 3) is carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child.¹⁰⁶

According to the Committee, it should thus be ensured that direct consideration is taken of the children's situation, as well as when sentencing is given and set in relation to the parents. The Council of Europe's General Assembly has touched on the same area and has, among other things, recommended that the imprisonment of mothers with young children should be avoided, urging that alternative forms of sanctions be developed for mothers of young children. Moreover, it is recommended that 'guidelines for courts of law be developed after which the courts of law should only consider imprisonment of pregnant women and women with infants when the committed crime is serious and involves violence and when the woman continues to pose a threat'.¹⁰⁷

¹⁰⁶ Committee on the Rights of the Child, Forty-first session, Concluding observations: Thailand, 17/3/2006 CRC/C/THA/CO/2, cf. Para. (48)

¹⁰⁷ Council of Europe Recommendation 1469 (2000) Mothers and babies in prison, (<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta00/erec1469.htm>). The quote is translated from point. Vii in the recommendations: 'to develop appropriate guidelines for courts whereby they would only consider custodial sentences for pregnant women and nursing mothers when the offence was serious and violent and the woman represented a continuing danger.'

In Denmark, the Children's Council has recommended:

[the] conditions for the upbringing of these children should be a significant factor in the choice of punishment. Here, it would be relevant to prioritise sentences which limit the separation between the child and the parent, for example, a form of punishment where the parent continues to sleep-over in the home.¹⁰⁸

According to § 80 of the Penal Code, consideration must be taken of, among other things, information about the offender when setting the sentence. This can include personal and social circumstances and, for example, family circumstances.¹⁰⁹ In Danish legislation, consideration of the child's best interests is, however, not in the enumeration of extenuating circumstances in the event of sentencing in § 82 of the Code.¹¹⁰ However, the enumeration is not exhaustive¹¹¹ and there is the possibility to reduce the punishment based on a specific assessment when information about the offender's person and other determining issues so indicate, cf. § 83 of the Penal Code.¹¹² But, in this context, reference is not made directly to the child's best interests as an extenuating circumstance in the event of reduction of punishment.

However, Danish legal practice exists in the form of a ruling from 1985, in which a suspended sentence was given of one year for the sale of approximately 25kg of 'hash', even though imprisonment would normally have been used for such an offence. The court did this in consideration of, among other things, 'the considerable adverse impacts which the serving of a sentence of imprisonment must be assumed to give rise to'. Among other things, this assessment is based on a statement dated 4 December 1984 (submitted after an investigation pursuant to the Administration of Justice Act §808) from the Danish Prison and Probation Service, which stated that the defendant was found to be suitable to receive a suspended sentence and that the consequences of imprisonment in regard to work, family and housing would make it immensely difficult to get the family on the right track again.¹¹³ Hence, the ruling is an example of a possibility that consideration of the family can suspend and lighten the punishment. It is, however, doubtful that this is normal practice and that children's rights play a prominent role in such cases.

It should also be mentioned that an already set punishment which is being served can be interrupted temporarily in very special cases. This is called 'sentence interruption' and can occur where quite special circumstances of, for example, a family nature, speak against an immediate continuation of the sentence.¹¹⁴ The law does not explicitly refer to the child's best interests as a consideration, but a guideline on sentence interruption states that if the conditions for the sentence are otherwise fulfilled, the sentence can be interrupted if urgent problems exist in the home and if

¹⁰⁸ Report to the UN's Committee on the Rights of the Child. Supplementary report to Denmark's 3rd periodic report, Children's Committee, January 2005, page 18 f

¹⁰⁹ See, for example, Public Prosecutor's Notification no. 3/2000, p. 5

¹¹⁰ Act no. 1068 of 6 November 2008 on § 82 of the penal code. The sentence is regulated in chapter 10 (§§ 80ff) of the penal code. The Administration of Justice Act, § 808 on social enquiry reports, states that such information must be provided about the indicted's personal circumstances, which must be assumed as being of importance to the ruling on the case regarding sentencing or utilisation of another legal consequence than punishment. The Public Prosecutor's notification no. 3/2000 establishes in detail the instances in which social enquiry reports must be conducted

¹¹¹ Karnov (2008) Administration of Justice and Criminal Law Copenhagen p. 486, note 359

¹¹² Act no. 1068 of 6 November 2008 on § 83 of the penal code

¹¹³ U.1985.611H

¹¹⁴ The Sentence Enforcement Act § 76, section 1. See also the order on permission for sentence interruption, BKG 2005-06-17 no. 501 Permission for sentence interruption

weighted consideration of the prisoner's child calls for the prisoner to go home. For example, this could be about respite care of a pregnant spouse where there are other under-aged children or it could be in cases where the prisoner has a sick child who is, for example, in hospital and where there is a need for both parents to be present.¹¹⁵ In such situations, it is obvious that consideration of the child's best interests can contribute to making a sentence interruption possible. The duration of a sentence interruption must be specifically set based on the consideration that substantiates the sentence interruption.

4.2 Imprisonment: Distinctions between remand custody and serving a sentence

There is a very big difference between being in remand custody and imprisoned as a sentenced prisoner. Even though a person is innocent unless proven guilty, it is a paradox that the frameworks for imprisonment for those in remand custody, in principle the innocent, are in many areas much worse than the conditions for the convicted, that is, the guilty person. This is apparent in relation to, for example, access to visits and contact with the outside world, which is typically far more limited for the person in remand custody than for the convicted person serving a sentence. In relation to children of prisoners, this is reflected in the fact that different conditions and problems apply. In many respects, the fundamental problems are, however, the same for persons in remand custody and persons serving a sentence, even though in the Danish legal sense they are covered by different laws: The Administration of Justice Act and the Sentence Enforcement Act. When considered in general, the following problems as far as remand custody and serving of a sentence are concerned:

1. How is the remaining family and children assured in a financial respect?
2. How is direct and regular contact maintained between the imprisoned parent and his or her child?
3. Choice of prison and the question of stationing.
4. How are births in prison related to, and whether infants can live with their parents in prison?

It is beyond the scope of this report to discuss points 1, 3, and 4, and interested readers are referred to the complete Danish study on children of imprisoned parents.¹¹⁶ We will, however deal with issue 2 in detail, below. Furthermore, at the end of this chapter mention will be made of how an assessment of the child's best interests can naturally also result in the discontinuation of contact with the imprisoned parent. A further question is whether the remanded prisoner has access to inform the family and children about his, or her, imprisonment; this issue is examined in a previous chapter.

4.3 Contact between the child and the imprisoned parent

The CRC makes it clear, as already mentioned, that the participating states 'must respect the right of a child who is separated from one or both parents, to maintain regular personal connection and direct contact with both parents except if this in conflict with the child's best interests'" (Article 9.3). Potentially, this is about a large number of issues, including access to conduct telephone calls, exchange of letters, the right to visit and exit as well as the possibility of stationing, perhaps the possibility of

¹¹⁵ The Ministry of Justice, the Directorate for the Prison and Probation Services' guideline no. 48 of 28 June 2005 on permission for sentence interruption (the sentence interruption guideline)

¹¹⁶ See Smith and Jakobsen (2010) as above for further information on this issue

sentence interruption, probation and choice of prison, which should not be located too far from the prisoner's family. It is noted, however, that remand prisoners are, as far as possible, placed in the location where the criminal case is being processed (see the Administration of Justice Act, § 770, section 2).

In the Danish legal context there are, in relation to the possibility of maintaining and developing the contact between the child and the imprisoned parent, significant differences, depending on whether the parent concerned is a remand prisoner or a sentenced prisoner. Many of the problems are basically the same, but remanded prisoners are generally far more limited in their contact with the outside world. The situation of the person in remand custody is regulated by the Administration of Justice Act and by regulation no. 738 of 25 June 2007 (remand custody regulation), which is established with legal basis in the Administration of Justice Act, § 772, section 2, point 2, and § 776, while the conditions for sentenced prisoners belong under the Sentence Enforcement Act.

In any case, there are many different ways in which the child can gain contact to his or her imprisoned parent, not just in theory but also in practice. The most typical forms of contact are examined in the three following sections concerning visits, telephone contact and exchange of letters.

4.4 Visits

Children's right to visit remand prisoners is not directly apparent in the Administration of Justice Act, but indirectly follows the right of the remand prisoner to visits, cf. the Administration of Justice Act § 771, section 1 and chapter 20 of the remand custody regulation. The same applies to those who are serving a sentence, cf. the Sentence Enforcement Act. For remand imprisoned persons, the general right to receive visits is described in the Administration of Justice Act, § 771 section 1, of which it follows that remand prisoners can receive visits to the extent that maintenance of order and security in the institution permits. Added to this, in consideration of the purpose of remand custody, the police can oppose remand prisoners from receiving visits or they can demand that the visit takes place under supervision. The remand custody regulation, § 39, section 1 states that, a remand prisoner has the right to visits as often as circumstances permit with the limitations that follow §§ 41-44 of the regulation. In § 40, section 1 of the regulation, it is established that the visiting time may not be shorter than thirty minutes and that prolonged visits must be permitted to the extent circumstances allow. For solitary confined remand prisoners, it provides that they should have permission for visits at least once weekly, that the visiting time may not be shorter than one hour and that prolonged visits must be permitted to the extent circumstances allow (§ 84). Furthermore, the prison staff must be aware of the fact that solitary confined prisoners – who are placed in a situation where the potential adverse effects are well-known and well-documented¹¹⁷ – should have extended access to, among other things, visits (§ 82).¹¹⁸ In § 56 of the remand custody regulation, it further states that visits from children can normally only take place when accompanied by an adult. Since the remanded parent does not have custody of the child, the holder of the parental custody must normally consent to the child visiting the prison. The possibility of a child visiting his or her parent can thus be precluded if the

¹¹⁷ Smith, P. (2006) 'The Effects of Solitary Confinement on Prison Inmates. A Brief History and Review of the Literature' in Michael Tonry (ed.): *Crime & Justice A Review of Research*, University of Chicago Press

¹¹⁸ See also the Administration of Justice Act, § 776 as well as Hans Jørgen Engbo »Sentence Enforcement Right« Association of Danish Lawyers and Economists Publishing House, 2nd printing 2005, p. 159 f

holder of parental custody does not give the necessary permission.

What remains is that children of remand prisoners have an indirect right to see their imprisoned parent for at least thirty minutes per week which, however, can only be realised if a number of issues, besides the purely order and security issues, can be fulfilled. For example, the possibility of visiting can be precluded: 1) by the holder of parental custody (if the remand prisoner is not the holder of custody), 2) if an adult does not accompany the child, and, 3) if there is no money to pay for the transport to and from the prison.

The focal point in this area is that, in any case, a thirty-minute, or for that matter, an hour's, weekly visit cannot be regarded as sufficient at all if the basis is taken in the child's rights and needs in those situations where contact must be seen as being in the child's best interests. Against this background, it must be recommended that reference is made directly to the consideration of the child's best interests in regulations regarding visits and that children are ensured a sufficient minimum right to visit their imprisoned parents. This should concern the child having the right to see his or her parent for several hours per week, for example, in the region of four to five hours weekly. Moreover, the child should be ensured the right to see his or her parent within a reasonable period of time after imprisonment so it can be ensured that weeks and months do not go by.

In relation to parents in solitary confinement, the prisoner and thus the child are in a very special situation. As will be apparent in descriptions later on, the adverse effects of solitary confinement are well known and can, by all appearances, have tremendous influence on, not just the isolated prisoner, but also on his or her family and children. The effects of solitary confinement can, for example, significantly reduce the ability to behave as a more or less well-functioning parent.

The right to, and possibility of, visits for prisoners serving a sentence is regulated in the Sentence Enforcement Act §§ 51 and 52 and in the visiting regulation.¹¹⁹ On this point, prisoners serving a sentence are, in the legal sense, in a slightly better position (and in practice, in a somewhat better position) than remand prisoners, mainly because there is no longer a need to protect the police investigation.

A prisoner serving a sentence has the right to have visits, including by his or her child at least once weekly, of at least one hour's duration; however, as far as possible for two hours. Referral to the child's best interest is not included as such in the regulation, but it is apparent, however, that the possibility of extended visits should be considered 'when permission for visits by children is requested', just as the visiting guidelines state that such requests should be accommodated as far as possible.¹²⁰ The visiting regulation, § 14, regulates, in particular, visits by children which can normally only take place with the accompaniment of an adult.¹²¹ It thus follows, from the above argument regarding visits to remand prisoners, that it should be recommended that children are

¹¹⁹ Order no. 1337 of 3 December 2007 on the act on enforcement of sentence, etc. (the Sentence Enforcement Act) and order no. 737 of 25 June 2007 on the access to visits, etc. for inmates who are serving a prison sentence or who are in detention in the Prison and Probation Service's institutions (the visiting order)

¹²⁰ The Ministry of Justice, the Directorate for the Prison and Probation Services' guideline no. 36 of 25 June 2007 on the access to visits, etc. for prisoners who are serving a prison sentence or who are in detention in the Prison and Probation Service's institutions (visiting guideline), point 3

¹²¹ See the section on Social Measures, which states that the Committee for Children and Youngsters can decide that visitation may only take place in the presence of a representative from the municipality when this is necessary in consideration of the child's health or development

ensured a sufficient minimum right in the same way to also visit the parent serving a sentence. Correspondingly, it should also be ensured that not too much time passes before the first visit takes place.

In the Sentence Enforcement Act, § 52, it is established that a visit can take place on the condition that the visitor allows their outer clothing to be checked. This is compulsory in closed prisons and can be established as a condition in open prisons. Such security checks can, however, have a frightening effect on the child which can require special consideration by the prison staff. Therefore, direct consideration should be taken of this and regulations introduced in to the relevant acts and orders which take the child's best interest into account. For example, it could be emphasised that when examining (frisking) children, caution must be shown or that the examination/frisking should only be carried out by specially qualified visitor staff.

With a view to creating an accommodating atmosphere in the visiting facility, the Directorate for the Prison and Probation Service's communication, dated 5 November 2006, stated that there must be a suitable selection of toys, which according to the institution's assessment are suitable to stimulate the contact between the prisoner and their children.¹²² Among other things, the ombudsman has referred to this communication several times during his prison inspections.¹²³ The more detailed requirements to visiting facilities, etc., will be handled in a later chapter.

Besides the visiting situation itself, there are also possibilities in other areas to maintain and develop the contact between the child and the imprisoned parent. For example, this applies in connection with 'special leave' as well as in the event of telephone contact and correspondence.

4.5 Special permission to leave the prison

Permission for a special leave of absence (including leave to return home) may give the prisoner the opportunity to leave the institution for a specific period. However, this is only when special circumstances call for it and only with the consent of the police can remand prisoners be given the right to leave of absence.¹²⁴ A leave permit for a remand prisoner is only given with an escort and only for a shorter period, normally not more than one day in addition to travelling time.¹²⁵

¹²² Cf. communication of 5 November 2004 to the Prison and Probation Service's prisons and detention centres from the Ministry of Justice, the Directorate for the Prison and Probation Service

¹²³ Inspection of the Institution at Herstedvester on 2, 3 and 7 February 2005, 10 October 2005, 2004-4168-328. The ombudsman also refers to the Ministry of Justice's response of 13 April 2005 to questions no. 48 and 49 of 11 March 2005 from the Folketinget's Judicial Committee in which the Directorate for the Prison and Probation Service's communication is mentioned

¹²⁴ The Administration of Justice Act § 771, section 2 as well as the Remand Custody Order, chap. 19, §§ 36-38 (Order no. 738 of 25 June 2007, The Remand Custody Order). Neither the Administration of Justice Act nor the Remand Custody Order elaborate further on what is understood by special circumstances. However, the Ministry of Justice, Directorate for the Prison and Probation Service's guideline no. 37 of 25 June 2007 on the order on sojourns in custody (the remand custody guideline) point 90, states that special circumstances can, for example, be a closely related person who is seriously ill or a closely related person's funeral. Special circumstances can also be the prisoner getting married or attending to personal interests of a certain importance. Point 91 states furthermore, that permission for exit can be given in other situations than those described above, when other special circumstances call for it

¹²⁵ According to the Administration of Justice Act § 771, section 2 and the Remand Custody Order, §§ 36 and 37, the detainee must, as a basis, pay for the expenses connected to travel, stay and pocket money pursuant to § 38, section 1 of the Remand Custody Order. However, according to the same rule, section 2, it will be possible to obtain subsidy to cover travelling costs according to the rules established by the Directorate for the Prison and Probation Service. Moreover, the detainee will have the possibility of obtaining financial subsidy to visit

Again, the possibilities are better for prisoners serving a sentence, whose right to special leave is regulated in the Sentence Enforcement Act and in the special leave regulation.¹²⁶ Pursuant to those rules, permission can be given for, among other things, special leave when the purpose is reasonably justified in regard to family matters. Furthermore, the special leave regulation states that prisoners may obtain this 'in order to visit specific, closely related persons' (§ 35, section. 1). The access to exit with a view to visiting children is not specifically emphasised, but it is apparent in the Directorate for the Prison and Probation Service's guideline no. 58 of 14 September 2007, on special leave for those who are serving a sentence or are in detention in the Prison and Probation Service's institutions (the guideline) point 63, that 'closely related persons' is understood as, for example, children and grandchildren.¹²⁷

As a rule, when certain timing conditions in addition to conditions regarding the risk of misuse in consideration of law enforcement are fulfilled the imprisoned parent has, according to the exit regulation, the possibility of obtaining one special leave within every three-week period from Friday 4pm to Sunday 9pm (§ 38, section 3). However, § 41 states that if the institution assesses that there is a need for special leave to a broader extent than mentioned in §§ 36-40, the question is submitted to the Directorate for the Prison and Probation Service. In practice, it can be possible to have more frequent home leave, typically weekend, every 14th day if the prisoner has close contact to the child which is important to maintain, and in consideration that the prisoner has gained permission for regular home leave.¹²⁸

For example, special leave may be granted when the prisoner's child is seriously ill.¹²⁹ Moreover, the child's first school day, christening, confirmation and similar events form the basis for the granting of permission for leave for important family events.¹³⁰ In connection with Christmas and/or New Year, it is furthermore possible to obtain permission for extended leave (§ 38, section 6).¹³¹

The regulations on special leave are thus not written with the direct starting point in the child's best interest, but the protection of the child's and the imprisoned parent's right to contact is covered by several of the regulations. On the whole, it can thus be concluded that, seen in legal terms, there are a number of options to make use of special leave in order to accommodate the needs of prisoners' children. The question, however, is how the regulations are handled in practice. In any case, it must be

his or her children according to order no. 559 of 21 June 2000 on social security for persons who are in remand custody or imprisoned to serve a sentence in a prison or detention centre (see above)

¹²⁶ The Sentence Enforcement Act, §§ 46ff (Act no. 1337 of 3 December 2007 on the act on enforcement of sentence, etc.) as well as order no. 1081 of 13 September 2007, on exit for prisoners who are serving a sentence or are in detention in the Prison and Probation Service's institutions (the exit order), that is, §§ 31-43

¹²⁷ A person who functions as an exit receiver for a prisoner must, according to the special leave order, § 35, section 3, confirm that the visit can take place for each special leave. Confirmation from a minor child will hardly be sufficient. Leave to visit minor children will therefore, as the predominant rule, take place at an adult close relative's home where the prisoner can stay together with his or her children.

¹²⁸ Communication from the Ministry of Justice, Directorate for the Prison and Probation Service of 10 July 2000 to the Prison and Probation Service's institutions, detention inspectors and police, file no. 2.k gr. 104 'Regarding future practice in certain types of cases that are substantiated in consideration of the prisoners' minor children'

¹²⁹ The special leave Order § 31, section 1, no. 1 and the exit guideline, point 59

¹³⁰ The special leave Order § 31, section 2, no. 1 and the exit guideline, point 62. Referral can also be made to the attending to personal interests, which can be understood as particularly distressing, emergency problems in the home such as child care, assistance in the event of illness or the like, cf. the special leave Order, § 31, section 2, no. 2 and the guideline, point 62

¹³¹ Regarding special leave in general, see also Engo 2005, p. 276 ff

recommended that the consideration of the best interests of prisoners' children must be written more directly into the regulations and legal framework, as well as expanding the possibility of using special leave so that, to a larger extent, the aim extends beyond, for example, cases of serious illness and special occasions, such as the first school day, etc.

4.6 Telephone contact and exchange of letters

Telephone contact and exchange of letters can be immensely important communication channels with a view to maintaining contact with an imprisoned person. The remand imprisoned parents' right to exchange of letters is regulated in the Administration of Justice Act (§ 772, section 1) and chapter 21 of the remand custody regulation. Once again, the rules are not directly meant for prisoners' children, but the rights of children to exchange letters with their imprisoned parents must be presumed to be derived from the same rules. However, reference is not made to the consideration of the child's best interest as the grounds for permitting the exchange of letters. This can become a problem as the exchange of letters can be limited in regard to the investigation or in regard to maintaining peace and order in the detention centre. Thus, the police can 'examine the letters before receipt or forwarding' (§ 772, section 1 of the Administration of Justice Act). Letters can also be withheld in consideration of the investigation or in consideration of 'order and security in the remand prison'. The question of maintaining the withholding of letters must be submitted to the court for ruling (§ 772, section 1).

For the remand prisoner, the right to conduct telephone calls is secondary in relation to the right to exchange letters. According to the remand custody regulation, a remand prisoner can, if 'connection through the exchange of letters, without significant inconveniences, can be awaited and to the extent that is practically possible, (. . .) obtain permission to conduct telephone calls' (§ 75, section 1). This right can, however, in any case be revoked if the police find it necessary in consideration of the investigation or if, on the part of the remand prisoner, find it 'necessary in consideration of order or security' (§ 75, section 2 and 3). Telephone calls are made in the presence of prison staff or 'tapped' without court order unless this is not found to be necessary in consideration of order or security. If the telephone call is made in the presence of prison staff or tapped, the receiver of the call must be made aware of this prior to the call, cf. § 75, section 4.

On the whole, it must thus be stated that the authorities have the opportunity to intercept a remand prisoner's (unchecked) letters and telephone calls, in particular, from the outside world. The ECtHR has previously been aware of the fact that authorities can overstep their authority in this respect, and in *Golder v United Kingdom*, the state was judged to have stopped a prisoner's correspondence.¹³² This, however, concerned a violation of Article 6 and thus the right to a fair trial – that is, about the maintaining of a basic civil right. It is doubtful how much consideration of a remand prisoner's child will be weighted in such a context, especially in light of the fact that the Human Rights Court, as previously mentioned has, so far, not had a tradition of applying a child's perspective to cases about the rights of imprisoned parents.

The opportunity for a sentenced prisoner to exchange letters and make telephone calls is – not surprisingly – better. The access to make telephone calls follows the Sentence Enforcement Act, which gives the prisoner the right to make telephone calls 'to the

¹³² *Golder v United Kingdom*, (Application no. 4451/70), ruling of 21 February 1975

extent practically possible' (§ 57, section 1). There is no specific reference to the child's best interest. The right to make a call cannot now be limited in consideration of the investigation, but still with reference to considerations of order and security, or in consideration of the injured party of the crime.

What is not contained in the above stipulations – neither directly nor indirectly via the prisoner's rights – is the child's right to have text messaging and/or e-mail contact to his or her imprisoned parent (or another form of electronic contact via 'messenger' etc.).¹³³ The child should, however, be ensured this right to one extent or another, especially as far as parents serving a sentence are concerned, but also as far as possible where remand imprisoned parents are concerned. Such forms of communication are currently relatively easy to monitor and, moreover, so normal and natural for the majority of the children concerned – and so obvious to use in this context. Children should be ensured this right and a practical solution should be provided. Possession of mobile phones in prisons and detention centres is not permitted pursuant to regulation no. 37 of 25 June 2007 on prisoners' access to carry, possess and have items, etc., and money at their disposal in the Prison and Probation Service's institutions (the item regulation) § 2, section 1, no. 11; and can entail disciplinary punishment pursuant to § 35, section 2. Possession of mobile phones in closed prisons and detention centres is even punishable pursuant to § 124, section 4 of the penal code. The Prison and Probation Service, however, is currently conducting a trial project with installed mobile phones in the cells in an open prison.

4.7 When contact is not in the child's best interest

It is apparent from a number of points, above, that the human rights basis in this context is the child's rights and the child's best interest. Therefore, if it is not in the child's best interest to maintain contact with an imprisoned parent, the contact should not take place. There can be innumerable reasons why this arises – the crucial thing is that the child's best interest is placed at the forefront. It is essential that in such situations the imprisoned parent's interests, for example, are not prioritised over the child's needs.

There are also examples within Danish legal practice that such consideration has been taken in relation to a child and an imprisoned parent. In connection with a distraint case where an imprisoned father wanted his son handed over for visitation, the mother objected. The County Court found that the boy's psychological wellbeing would be exposed to serious danger if he was handed over for visitation with the father while the father was staying at one of the Prison and Probation Service's institutions, and subsequently rejected the handing over. Hence, the State County had suspended the right to visitation and the High Court upheld the ruling.¹³⁴ In so doing, the child's best interest was included as a main factor in the basis for decision at both the County court and the High Court and this resulted in contact not being established between the child and the imprisoned parent.

In relation to children of imprisoned parents, such cases are a reminder of two key issues: 1) that the child's best interest should always be the basis for decisions on contact between the child and the imprisoned parent; and 2) to the extent there is doubt about the competence as a parent, competent authorities should assess when

¹³³ The possibilities of giving prisoners access to the Internet and e-mail correspondence continues to be severely limited, cf. Engbo 2005, p. 306 f

¹³⁴ OE2005. B-3254-05

contact is in the child's best interest. These issues lie behind the above discussion on whether notification from the police should always be given to the social authorities when a parent is placed in remand custody. But the two points are naturally also a general reminder that many situations can arise in connection with arrest, visits in prisons, etc., where police officers, prison staff or others should be aware of their duty to inform. Here, Article 3 of the Convention on the Rights of the Child is relevant and the requirement that the child's best interest comes first in all provisions regarding children.

5. Visiting in prison

[F]or the sake of maintaining contact between the prisoner and the children [it] is important to have mutual experiences that resemble family life and not just an afternoon visit.¹³⁵

It has been estimated that more than 800,000 children in Europe experience having a parent in prison on a given day. This must mean that many thousands of children visit European prisons daily in order to see a parent. But, even though the prison, as an institution, has several centuries under its belt it has not, in any way, tried to adapt arrests and sentences with a view to the needs of these children. Actually, it is difficult to imagine a type of institution that is further from the idea of a child-friendly place. Fortunately, this is slowly changing, but there are still many problems connected to creating child-friendly visiting settings in detention centres and prisons.

5.1 Safety considerations, prison culture, and child-friendly initiatives

When visiting a remand prison or a prison for sentenced prisoners, it is clear that the overall focus is on security. This is not surprising. Unfortunately, sometimes this focus is very clear-cut and there can be far too little awareness of the needs of children. The physical settings, security precautions, rules and, in some cases, the atmosphere, tone and culture are not exactly child-friendly in many institutions and this means that it can be unpleasant and unsettling for children to visit the prison world. This is very undesirable and, additionally, impacts a group of children who are already suffering from the fact that they have to cope without their parent.

Fortunately the Danish Prison and Probation Service has, within recent years, directed considerably more attention towards the needs of prisoners' children. This positive development began around the turn of the millennium after the publishing of the Danish National Centre for Social Research's report "Parents in prison" from 1999. The report became an eye-opener in relation to how overlooked and vulnerable prisoners' children have been in Danish society.

Within recent years in the Prison and Probation Service's organisation, focused work has been done on a number of the problems that face prisoners' children. Fortunately, a great deal indicates that this development is continuing but there are also still many aspects in relation to the visiting possibilities and visiting conditions in the Prison and Probation Service that can, and should, be improved.

In this section about children visiting the Prison and Probation Service's institutions, we will take a closer look at the following issues and problems:

¹³⁵ Christensen (1999) as above p. 76

1. What are children's experiences in connection with visits?
2. How quickly do children have the opportunity to visit their imprisoned parent after imprisonment has taken place?
3. How often and for how long do children have the possibility of visiting their imprisoned parent?
4. Transport problems and inconvenient visiting hours.
5. The visiting facilities in the Prison and Probation Service's institutions.
6. Certain institutions' special events and initiatives for imprisoned parents and their children.
7. The employees' handling of visiting children.
8. Security control of children.
9. Supervised visits in connection with remand custody.
10. Solitary confinement of parents in connection with remand custody.

5.2 The children's experiences

The visiting conditions in the Prison and Probation Service's institutions have a tremendous impact on children's experience of visiting their imprisoned parents. But, of course, other conditions can be in evidence. How the visit is experienced depends to a high degree on the individual child's relationship to his or her imprisoned parent. The mood during the visit can also play a major role because it is obvious that a visit can be experienced as unpleasant if there is an ill feeling between the prisoner and the relative who is with the child. Likewise, it can be of great importance if there are ill feelings between the prisoner or the adult relative and the staff in the prison.

As previously described, many children are worried about their imprisoned parents. According to Else Christensen's survey, visiting the detention centre or prison can, to a high degree, help to calm the children.¹³⁶ The same is concluded in a survey from 1997: 'Children developed fantasies and anxieties about their fathers which declined after prison visits had reassured them'.¹³⁷ A Danish prison officer explains it thus: 'Our impression is that children feel safe when coming here when they are initially within the walls and can see that quite ordinary people are found in here'.¹³⁸

From children's accounts it can also be established that they are often happy to come and visit because it gives them an opportunity to spend time with their imprisoned parent. Ten-year-old Cherie tells: 'It's fun actually, even though you are shut in a teeny, tiny room. But it's still fun to visit him. Just talking with him again – that's really cool. Really cool. I just wish I could talk with him all the time'.¹³⁹ Neither is Kristian in doubt about why he really likes coming to visit: 'Visiting is good because I can spend time with my father'.¹⁴⁰

Nevertheless, several Danish children highlight problems when they talk about visits in the Danish prisons. One boy explains: 'I thought, what on earth are we going to do here? You've asked quickly how things are going and then you sit there and look at your shoes and hope that the time will pass quickly even though you have looked

¹³⁶ Christensen (1999) as above pp. 50 and 100

¹³⁷ Boswell, Gwyneth and Wedge, Peter (2007) *Imprisoned fathers and their children*, London p. 61

¹³⁸ Detention centre custodian K (detention)

¹³⁹ Prison Choir's CD: *Far i fængsel* (Dad in Prison)

¹⁴⁰ C1, Smith and Jakobsen (2010) as above

forward to it the whole week'.¹⁴¹ Another child, who only rarely visits his father, explains: '(...) there's nothing to do, nothing. What should we do? We just sit and stare (...)'.¹⁴² Just the arrival itself to a prison, the atmosphere, the uniformed staff and the tremendous focus on security makes the prison a distinctive institution and a difficult place for children – unless thought is given to how this group of guests can be welcomed. Some children become afraid of the prisoners and the security check and of the small 'ugly' visiting rooms: 'Those people who work with the scanner are sometimes rude', tells one child,¹⁴³ and 13-year-old Line explains: 'I don't like the prison. When I visited him for the first time, I was mostly afraid of the officers'.¹⁴⁴

Children tell that it is unpleasant to experience that their parent is locked up. As Natasha explains: 'It was sort of very fenced in (...) The room we were in was very small (...) It wasn't especially nice (...) because he was shut in so much'.¹⁴⁵ Another child describes the feeling of being imprisoned during the visit: 'When he was in [closed prison], we visited about every fourteenth day. Once, we had toys with us but the staff said that children had to stay in the room. That wasn't nice. When they closed the door, we were also in prison'.¹⁴⁶

5.3 In practice, how soon do children have the possibility of visiting their imprisoned parent?

There is no legislation on how much time may pass after imprisonment takes place before the prisoner (in remand custody or serving a sentence) has a right to see his or her child, or when a child has a right to see his or her imprisoned parent. As previously mentioned, the remand prisoner has the right to a 30-minute visit per week, while a prisoner has the right to a one-hour visit per week. However, it can take some time before a visit permit is granted and the first visit can actually take place. This is not especially expedient as it is very important that the child is given the opportunity to visit his or her imprisoned parent as soon as possible. Often, the child's immediate need is to see that mum or dad is fine. This applies especially on top of a violent arrest, or if the child has the experience that the parent has disappeared into thin air.

According to the DIHR survey, there is a difference from institution to institution as to how quickly the child has the opportunity to visit after the remanded or imprisoned parent has requested a visit by his or her child.

As far as remand prisoners are concerned, 56 per cent of the participating police officers responded that it is possible for children to visit within one week after the remand prisoner has applied for a visit permit; 14 per cent of the police officers responded that up to two weeks can pass. One police officer responded that up to a month can pass after the remand prisoner has applied for a visit permit.

¹⁴¹ The magazine, Prison and Probation Service's theme booklet about the family and the Prison and Probation Service, September 2009. Children's quotes (Dennis) from family therapist, Rikke Betak's interviews with prisoners' children

¹⁴² Christensen (1999) as above p. 68

¹⁴³ Statement from child (p. 5) in compilation of Bosch and Fjord's children's workshop, 27-09-07, held at the Egmont Fund. Nine prisoners' children participated in the workshop and the aim of the workshop was: »To obtain inspiration to improve the visiting facilities at Vridsløselille State Prison. To 'hear' the children's needs and experiences in order to be able to design at children's level.« (p.1) Additionally, a parent group participated consisting of 4 mothers, an uncle and two toddlers

¹⁴⁴ Line is quoted from the website: <http://www.faengsel.com/>

¹⁴⁵ Taped interview on the website: <http://www.elbecks.dk/minfarifaengsel/>

¹⁴⁶ Child of prisoner, Christensen (1999) as above p. 68

Of the participating employees in the remand prisons, 46 per cent responded that it is possible to have children visit within one week after the remand prisoner has applied for a visit permit, while 29 per cent responded that up to two weeks can pass. Two persons responded that up to a month can pass; and one wrote that all of two months can pass.¹⁴⁷

For those persons who serve their sentences in prisons, 53 per cent of the participating prison employees responded that it is possible for children to visit within one week after the prisoner has applied for visits, while 13 per cent responded that up to two weeks can pass. It can, however, be worse than that. A social worker employed by the social authorities wrote that he, or she, is a case worker on a case where both the mother and father are in remand custody and where the eldest, 17-year-old, son is also charged with being involved in the case and, 'As a result of this charge, he has not had the opportunity to visit his parents through the last seven months'.¹⁴⁸

Overall, the responses from the police, employees in the detention centres and prison employees, point to the fact that the majority of remand prisoners and prisoners can, on the whole, have visits within one week. However, there are examples that a longer time can pass and a few examples that a really long time can pass before the children can see their imprisoned parent. Different circumstances can come into play, not least, in relation to the imprisoned parents. That up to a month can pass must be considered as being altogether unacceptable, especially when the situation is viewed from a child's perspective. As reported by Else Christensen, it is highly problematic that it can take two months before a 2-year-old child can see his mother.¹⁴⁹

5.4 How often and for how long do children have the possibility of visiting their imprisoned parent?

As mentioned in the chapter about the legal issues, there are particularly unfavourable conditions when a father or mother is in remand custody, in relation to visits and maintaining contact with their parents. To a great extent, this has to do with the desire to protect the police investigation. It could be said that the legislation has been built up based on the tension between, on the one hand, the solving of, and fighting of, crime and, on the other hand, the detainee's rights. On the contrary, there has not been legislation concerning when the remand prisoner's child has a right to see his or her parent.

As mentioned earlier, according to § 40 of the remand custody regulation, the remand prisoner has, in any case, the right to visits for half an hour per week.¹⁵⁰ When the remand prisoner is subject to correspondence and visit control or is in solitary confinement, the police will approve and monitor the visits and this can be of crucial importance to the visiting possibilities and visiting frequency. The Prison and Probation Service approves visits for the other remand prisoners.

The Danish Institute for Human Rights' questionnaire survey indicates that there is a significant difference as to how often and for how long visits actually take place.

¹⁴⁷ Prison worker M (detention), prison worker Æ (detention), prison worker T (detention), prison worker J (detention), see Smith and Jakobsen (2010) as above

¹⁴⁸ Social worker K (the social authorities)

¹⁴⁹ Christensen (1999) as above p.45

¹⁵⁰ According to § 84 of the Custody Administrative Order, the solitary confined remand prisoner has the right to a visit for one hour per week

Of those participating, who work in remand prisons, 32 per cent responded that remand prisoners have the possibility of receiving visitors several times per week; 45 per cent responded once per week; and two persons responded every fourteenth day; 36 per cent responded that there is no set practice, but that it depends on whether the police have staff to monitor the visit. In other words, it varies greatly from detention centre to detention centre and by all appearances, from case to case.

The same applies, though to a somewhat smaller degree, when the police responded to the same question. In the survey, 82 per cent of the participating police officers responded that, in practice, remand prisoners have the possibility of visits once per week. The comments in the comment field, however, also testify to a certain fluctuation in practice. For example, an assistant detective wrote: 'Only one visit per week is granted to remand prisoners',¹⁵¹ while another assistant detective wrote: 'MORE if possible and if requested'.¹⁵² Furthermore, 9 per cent responded that there is no set practice, but it depends on whether the police have staff that can monitor the visit. Some of the police staff also commented on the resource problem; for example, a police sergeant wrote in the comment field under the question: 'What could make the conditions better for remand imprisoned parents?', 'Additional resources so that visits are not cancelled due to insufficient police staff for supervision of the visit'.¹⁵³

When remand prison staff are asked about the length of the visits remand prisoners actually get, 61 per cent responded that they have an hour available; 25 per cent responded between one and two hours; and 21 per cent responded longer than two hours. That it depends on what they and/or the police have time and resources for, accounted for 21 per cent of responses.¹⁵⁴

Of the participating police officers, 15 per cent responded that remand prisoners are actually allowed to have visits for the half-hour they legally have a right to, while 94 per cent responded that remand prisoners are allowed to have longer visits and of these, by far the majority stated one hour. Of the police officers, 12 per cent responded that it depends greatly on what they – the police – have time and resources for.¹⁵⁵ A police sergeant tells the Danish Institute for Human Rights that visits, which the police must supervise, are in the hands of the individual officer. The police sergeant says that she sometimes lets a few prisoners have visits in addition to what they have a right to, if she has time and deems it important, especially if children are involved. Of course, it is positive that the police have the possibility of stretching themselves a little, but the individual employee's time and personal energy should naturally not be the decisive element. It is unreasonable, as the police sergeant also explains, that in the summer period it is sometimes only possible for visits every fourteenth day because police officers are on holiday.¹⁵⁶ A prison officer from a remand prison also illustrates this problem: 'As a basis, remand prisoners with visiting and correspondence control have one supervised visit per week. This normally also stands in practice, however not during the summer holiday period'.¹⁵⁷

On the whole, it is remarkable that there is such a big difference in how often and how long remand prisoners may have visits. Perhaps this is not so surprising when

¹⁵¹ Assistant Detective Ø (police), Smith and Jakobsen (2010) as above

¹⁵² Assistant Detective Å (police), Smith and Jakobsen (2010) as above

¹⁵³ Police Sergeant S (police), Smith and Jakobsen (2010) as above

¹⁵⁴ Several of the participants check-marked more than one option

¹⁵⁵ Several of the participants check-marked more than one option

¹⁵⁶ B8, Smith and Jakobsen (2010) as above

¹⁵⁷ A20

considering the circumstances, including that both the police and the remand prisons' resources are influential. This is not expedient. The survey indicates that there are different practices from remand prison to remand prison and – as a police sergeant comments: 'Different practices from police station to police station'.¹⁵⁸ Seen from a children's perspective, two things can be concluded: partly that, a) the minimum standard of a half-hour visit, but also the more normal one hour visit, is too little; and b) that it is unreasonable that there is such a significant difference and uncertainty connected to how many visits a child can have in practice and that, to quite a great extent, it can depend on police and detention centre time and resources.

For children of sentenced prisoners it applies that, most often, they have the possibility of visiting their imprisoned parent more than the prisoner's minimum right of a one-hour visit per week. Hence, 73 per cent of the employees in prisons responded that the prisoners have the possibility, in practice, of having visits several times per week.¹⁵⁹ None of the participating prison employees responded that the visits last one hour or less; 20 per cent responded that the visits last one to two hours; and 33 per cent responded that they last more than two hours. There were several who did not respond to this question, but commented that there are longer visiting times.¹⁶⁰

To summarise, the gathered data thus indicates that the minimum requirements to visits for remand prisoners and sentenced prisoners, in the majority of cases, are complied with and there is often the possibility of slightly longer and perhaps more frequent visits than the prisoners have a right to. In some cases, the minimum requirements are, however, apparently not complied with at all. There are, however, other issues besides the Prison and Probation Service and the police resources and case processing times that can have a bearing on how long and how often children have the possibility of seeing their imprisoned parent. To begin with, the prisoner and a possible partner or care-giver typically assesses whether a child should be included in a visit at all and, in such cases, how often. A purely practical problem which can 'rob' children of the possibility to visit their imprisoned parents arises in families with many children. A mother with four children tells that she has to draw lots between the children when they are to visit because only a limited number of visitors are allowed.¹⁶¹ According to a prison employee, this is a particular problem that impacts families of other ethnic background. A more common problem is that the prisoner may need to meet and talk about things with an adult relative (often the children's mother) without the children being there. As a seasoned prison employee explains:

Often, the 'adults' have one conflict or another and then in their frustration, forget that they have a child with them. Therefore, I think it's a really good idea that the parents have one or two visits to begin with without children. Then they can also talk about how they should respond to the children when they are visiting. For instance, agree on the

¹⁵⁸ Police Sergeant S (police)

¹⁵⁹ The Danish Institute for Human Rights' questionnaire survey to employees in the prisons. On the question: »How often do you find that inmates in your institution have the possibility of having visits from their children?« No one check-marked the options, that it was less than once per week, 13 per cent check-marked the option: »Once per week« and 73 per cent check-marked the option: »Several times per week«

¹⁶⁰ There are several who did not check-mark the options, but for instance, wrote in the comment field: »As long as possible. The basis is between 2 and 4 hours. In the therapy division; all the way up to 10 hours on Saturdays«. (Prison worker Y), »There is the possibility for visits, such as: Friday 3.30pm – 7.30pm, Saturday/Sunday 9.30am – 7.30pm « (social work consultant W), »8 hours max.« (therapy consultant X)

¹⁶¹ Bosch and Fjord's children's workshop, held on 27-09-07, p. 10 in the compilation on the situation for a mother in the »Parent group«: »One adult may bring max. three children along. One mother had 4 children. She has to draw lots when there is a birthday. Draw lots between the children. The explanation is fire risk, the rooms are too small for so many people«

*visit taking place on the children's terms within the frameworks that exist.*¹⁶²

5.5 Transport and inconvenient visiting times

*I haven't visited him very often. We have to spend a whole day driving just to be there for two hours.*¹⁶³

As previously described, according to the European Prison Rules, prisoners must, as far as possible, be placed in a prison close to their homes or near the place where their social rehabilitation will take place (rule 17.1). Likewise, the Danish Sentence Enforcement Act states that imprisonment must be carried out in the vicinity of the sentenced prisoner's place of residence as far as is practically possible (§23). The Penal Code § 80 states, furthermore, that the sentence must be set in consideration of, among other things, the perpetrator's personal and social circumstances, including for example, family circumstances.

So a sentenced person should be imprisoned close to his or her home and possible children, but due to various reasons this is not always possible. One major problem is the significant shortage of space in open prisons on Zealand and in the Copenhagen area. Hence, in a number of cases, it can be difficult in reality to live up to the principles behind rule 17.1 in the European Prison Rules and the regulations in the Sentence Enforcement Act, as the imprisoned parent is put in a situation where, in practice, contact to the child is reduced.

According to a chief superintendent from Copenhagen Police, they also experience this problem in relation to the remand prisoner:

*My experience is that, generally, a great deal of consideration is taken that the arrested person is placed in a detention centre close to his or her home. This is the police's decision. But situations can occur where detention centres close to the home are too full and the detainee is placed further away.*¹⁶⁴

A prison employee writes that this is often a major problem: 'What I experience most is the frustration of the prisoners when they are to serve their sentences in another part of the country than where their children live'.¹⁶⁵ A remand prison officer tells that he does not find that the prisoners talk about their children to any great length, but when they do, 'then it's often something about them being far away from home and it's difficult and expensive in regard to transport'.¹⁶⁶

It is inexpedient if, for example, children have to spend a whole Saturday on transport to and from prison for a one-hour visit with their imprisoned parent. A therapy consultant in a prison writes that it is the prisoners who 'feel that they have no right to insist that the kids must come and their dad in the prison. Some children travel very far with public modes of transport just to spend time with their father for 1-2 hours. Is this quality?'.¹⁶⁷ No wonder that the financial aspects of long transportation are also experienced as problematic. Long transportation to a detention centre or prison can be very expensive for the already pressured families affected by imprisonment. As we

¹⁶² A21, Smith and Jakobsen (2010) as above

¹⁶³ Child of a prisoner, Christensen (1999) as above p. 68

¹⁶⁴ B4, Smith and Jakobsen (2010) as above

¹⁶⁵ Prison worker K (detention), as above

¹⁶⁶ A20, as above

¹⁶⁷ Therapy consultant W (prison) as above

previously broached, the administrative order on social security for persons who are in remand custody or imprisoned to serve a sentence in prison or detention centre, that 'assistance can be provided to cover expenses in the event of visitation with children under 18 according to the rules in § 83 in the act on active social policy' (§ 6, section 1). On this basis, it is possible for municipal social workers, for example, to provide support for families'/children's transport to the prison in connection with visits.

According to the association, KRIM, there are many however who do not receive this support, a situation which may be connected to the fear held by many families affected by imprisonment that it will appear as if they cannot cope and, at worst, this may end with the child's forcible removal. Unfortunately, this concern can play a role in some families not making enquiries about assistance at the municipality. This can preclude children from getting the help to which they have a right.¹⁶⁸

As examples of the long and difficult transport conditions many relatives face, the new Østjyllands State Prison should be mentioned which, in 2006, replaced the old Horsens State Prison built in 1853. The children's perspective has been taken into account in the architecture, the visiting facilities and a number of other areas, which will be touched on later. On the other hand, the visiting logistics have not been especially well-considered as far as the transport to and from the institution is concerned. The prison is isolated out on a field and a bus drives by once every hour to and from the closest bus station to the prison. From the bus stop, there is approximately 1.3km to the prison itself and, as a staff member in the prison says, 'It's a long way in pouring rain, especially for a mother with a pram and two toddlers'.¹⁶⁹ The bus timetable does not fit in with the visiting hours, added to which the visiting hours can be unsuitable for children. For example, in some institutions the visiting hours are in the morning on weekdays when school children have to take time off school in order to visit.¹⁷⁰

5.6 The visiting facilities in the Prison and Probation Service's institutions

The visiting facilities and associated possibilities in the Prison and Probation Service's institutions differ greatly. A quite crucial difference is typically found between the closed and the open prisons where the latter, as a far more free prison regime, can arrange the visiting activity in another way than is the case in the closed prisons. For instance, a survey in 2008 showed that, in the majority of the so-called open prisons, visits in the rooms, access to play areas, sports halls and outdoor facilities are possible and many places also have the option of making meals together.¹⁷¹ On the other hand, the remand prisons typically resemble the closed prisons most closely, as the regime here focuses similarly on control and security, but the 'halfway houses', for example, are usually even more 'open' than the 'open prisons'.

In all circumstances, the decor of some prisons and remand prisons, in particular, as well as visiting facilities, do not invite the maintaining of a healthy relationship between children and parents. Many visiting rooms in the Danish remand prisons and prisons

¹⁶⁸ E12, Smith and Jakobsen (2010) as above

¹⁶⁹ A8, as above

¹⁷⁰ A12, as above

¹⁷¹ Opinion poll in open prisons, by the Directorate for the Prison and Probation Service, see The Directorate for the Prison and Probation Service, Sentence Enforcement office: »Report on the status of the area, the prisoners' children, in the Prison and Probation Service«, Copenhagen 30-11-09. Drawn up in continuation of the Folketinget's Legal Committee's processing of proposal for parliamentary resolution no. B 74 on improved conditions for children of prisoners. (see p. 2 of the report on open prisons)

are very small, spartan and boringly decorated and without room enough so children and parents can play together. In several places, the selection of toys is meagre and worn, with toy cars that do not work, one-eyed dolls and books with torn pages. Moreover, the toys in several institutions are only for very young children. As a rule, children are not permitted to bring along their own toys or, for example, school books.

Many of the visiting facilities are set up for adults to visit, not children. For the majority of 5-year-olds it would be unnatural, difficult and boring to sit on a chair and talk with his or her parents for an hour. As will be discussed below, significant changes and improvements have occurred in recent years with regard to a number of the institutions' visiting facilities. However, it is still not unusual that the visiting rooms in remand prisons have the character of what has become termed as a 'screwing room', where the decor is mainly about having access to sheets, condoms and a place to lie down.

Some parents simply do not think that they can invite their children to visit in such surroundings. For instance, a father tells: 'The first time I landed in prison I didn't tell my children. I just thought the visiting conditions were too miserable'.¹⁷² Another father, who was in remand custody in a closed Danish prison, tells about a visit by his daughter:

*The visiting room was gross. There was a narrow bed with paper on it, a bowl with condoms and a tub for "fix" needles. You simply can't let children come and visit in such a place.*¹⁷³

A third father speaks about the visiting rooms:

*Those "screwing rooms" are completely unacceptable. The sofa is full of stains and there's a box with 2½ broken toys, then there's a handful of condoms, paper towels, a clean sheet and a notice to remember to use the sheet (...) And then you've got 1-2 hours in there. You cannot even sit and eat there, there's not even a flower, nothing (...) The rooms are depressingly bad. There should be a room where you can be with your children and have a nice time. A place that was a little cosy.*¹⁷⁴

Parents also point out that it is gross to go into a visiting room that stinks of smoke and that the visiting rooms are far too small for visits by children.¹⁷⁵

It is apparent from the DIHR survey that many of the employees are also dissatisfied with the physical visiting conditions. Under the questions about what the Prison and Probation Service and the individual prisons or detention centres could do to improve the conditions for children, importance was placed on the fact that visiting facilities are problematic and should be improved. The prison staff wrote, for example, 'The structural conditions are generally a problem',¹⁷⁶ and they would like 'improvement of the visiting facilities'.¹⁷⁷ 'Larger visiting rooms',¹⁷⁸ are called for, 'more space',¹⁷⁹ and

¹⁷² C4

¹⁷³ Grøftehaug (2004) Fangebørn, Århus Copenhagen p. 48

¹⁷⁴ Christensen (1999) as above p. 66

¹⁷⁵ Bosch and Fjord's children's workshop, held on 27-09-07, p. 11 in the compilation from the »Parent Group«: »Consistent criticism that the rooms are too small«, »Problem with smoking, gross to go into a room that stinks of smoke«

¹⁷⁶ Detention centre custodian J (detention)

¹⁷⁷ Prison worker I (detention)

¹⁷⁸ Prison worker Å (detention)

¹⁷⁹ Detention centre custodian K (detention).

that the institutions had 'a visiting room that is intended for only children's visits (...)',¹⁸⁰ '(...) special playrooms for children of various age groups'¹⁸¹ or special 'family visiting rooms'.¹⁸²

In other words, there are visiting facilities in the Prison and Probation Service where it can be questioned whether they can accommodate a 'maintenance and development of the family relationships as normally as possible', as the European Prison Rules prescribe.¹⁸³ The visiting conditions as described above are not compatible with the Prison and Probation Service's minimum standards for visiting rooms, issued in 2004, where, among other things, there is a description that visiting rooms must have a 'natural, friendly atmosphere' and 'bright and friendly rooms'.¹⁸⁴ These minimum standards were drawn up with a view to renovation or new décor and the Prison and Probation Service is apparently aware that such initiatives are imperative. Within recent years it can, as already mentioned, be established that larger or smaller renovation of the visiting facilities has taken place in some of the Prison and Probation Service's institutions.¹⁸⁵

Among the open prisons, Jyderup deserves to be highlighted. Here, there has been good practice for a number of years regarding children visiting. The greater part of the prison area accounts for the visiting facilities in Jyderup State Prison, which creates a relatively normal frame around visitation with the children – as normal as it can be in the prison system. For instance, there are green areas and a small church on Jyderup prison's area and, in the prison itself, there is the possibility of making meals and eating together and of meeting other prisoners' children under relaxed conditions. The weekend visiting hours are from 9.30am to 7.30pm, which also gives the families the possibility of a more natural visitation where they can do everyday things such as prepare meals, eat together, play, watch TV, etc.¹⁸⁶ In so doing, such visiting arrangements live up to both the normalisation principle, which is ratified in the Danish Sentence Enforcement Act and to the Prison and Probation Service's own principle programme and to the European Prison Rules.¹⁸⁷

Of the closed prisons, probably the most prominent change occurred in Vridsløselille State Prison where the Egmont Fund granted funds for renovation of the visiting area, which has been managed by Bosch and Fjord. Unfortunately, the visiting rooms have subsequently been affected by dry rot and are once again undergoing renovation.¹⁸⁸ During recent years, other renovations and constructions have also improved visiting facilities significantly in certain other prisons.¹⁸⁹ When the Østjyllands Prison was

¹⁸⁰ Custodial manager K (detention)

¹⁸¹ Prison worker X (prison)

¹⁸² Prison worker V (detention)

¹⁸³ Council of Europe, Committee of Ministers, Rec (2006) 2, the European Prison Rules. See 24.4 (the author's translation)

¹⁸⁴ Directorate for the Prison and Probation Service, Sentence Enforcement Office: »Report on the status of the area, prisoners' children, in the Prison and Probation Service«, Copenhagen 30-11-09, see p. 2

¹⁸⁵ However, the remand prisons lag behind on the area. See also Else Christensen, who concludes that in both the open and closed prisons there are more free frameworks for visits than in detention centres (Christensen (1999) as above, p. 51)

¹⁸⁶ A38. Visits indoors typically take place in the prisoner's own rooms (blocks) and, for example, visitors do not have access to the prison's production workshops (A38)

¹⁸⁷ Hans Jørgen Engbo Straffuldbyrdsret (Sentence Enforcement Law), 2005, p. 44. See also the Council of Europe, Committee of Ministers, Rec (2006) 2, the European Prison Rules, 24.4. Concerning progressive conditions in the open prison Møgelkjær, see Smith and Jakobsen 2010, p. 144 f

¹⁸⁸ Guided tour of Vridsløselille State Prison on 06-10-09

¹⁸⁹ See Smith and Jakobsen (2010) as above p146 f

constructed, the need for more child-friendly visiting conditions and the possibility for extended contact between prisoners and their children, were taken into account. Here, two visiting apartments have been set up where prisoners and their families can have a longer visit as well as stay overnight and the apartments are frequently used.¹⁹⁰ The visiting apartments are open-plan, with a small kitchen, a dining room and living room, two bedrooms and a small 8 sq.m. terrace.¹⁹¹ Normally, two to three children can be brought along, but there have been several times when an extra bed has been set up. The prison and the prisoners write to the municipality if the prisoner wants to use the visiting apartment with his or her family. The municipality then assesses if it is a good idea that the family concerned is together in the visiting apartment for 47 hours.¹⁹² Using the visiting apartments is fundamentally a big plus for the children, but the regime and the conditions around their use are not entirely unproblematic. Foremost is the way in which not just the prisoners, but also the adult relatives and children are locked in for a period of up to two days. It would have been desirable here for the children especially to have the possibility of going outside into a small courtyard area, a playground or similar.¹⁹³ As a therapy consultant from Østjyllands Prison puts it: 'None of us other people can imagine being locked in for 47 hours'.¹⁹⁴

One of the very general problems around children's visits in the closed prisons is that there are only a few places where you can go outside in connection with visits, but this is possible in the State Prison in Ringe where there is a playground, which can be used by the prisoners having their children visit.¹⁹⁵ Likewise, courtyards are attached to the new visiting facilities in Blegdamsvejens Prison.¹⁹⁶ It must be said that these initiatives are of great importance because prisoners' children, in particular, call for possibilities of doing things together with their parent which require physical and often outdoor activities, and because some of them directly call for possibilities to stay outside during visits.¹⁹⁷

The remand prisons still lag behind the prisons when it comes to initiatives in relation to visiting children. A follow-up in connection with the turn of the year, 2008-2009, on whether the institutions' visiting facilities live up to the Directorate for the Prison and Probation Service's minimum requirements, showed that several of the remand prisons did not live up to these standards. For the majority of those concerned, the detention centres are very limited mainly by their physical framework. Many remand prisons are located in old, cramped and worn buildings with high prisoner occupancy where the possibilities for extensions and renovations are limited. Furthermore, financing is a factor. And yet, some places have done something to improve the

¹⁹⁰ No actual calculation exists of how much the visiting apartments are used, but according to a social work consultant in the Prison and Probation Service, they are used a great deal and often by families with children. (A2)

¹⁹¹ Guided tour of Østjyllands State Prison on 18-09-07

¹⁹² A9

¹⁹³ The two visiting apartments have a large communal courtyard, but this is actually not used. A 'layground group' has been formed, which will assess how the courtyard can be adapted and the intention is that the families will use it (A2)

¹⁹⁴ A8

¹⁹⁵ Guided tour of Ringe State Prison 18-09-07 and information from prison inspector Bodil Philip (A27).

¹⁹⁶ Directorate for the Prison and Probation Service, Sentence Enforcement Office: »Report on the status of the area, prisoners' children, in the Prison and Probation Service«, Copenhagen 30-11-09, see p. 3

¹⁹⁷ See, for example, the children in Bosch and Fjord's children's workshop held on 27-09-07. On page 6 the children describe: »What is cool/fun to do with my father« and they draw and tell about their dream visit. Outdoor activities are mentioned repeatedly. 6 out of 8 drawings with appurtenant descriptions of a dream visit take place outside or partially outside. One example of the descriptions is: »There must be a door so you can just go outside if you want. Outside, I play football with my dad on a lawn« (drawing of a door and outside, a lawn, football goal and two persons who play ball and smile)

conditions for the prisoners' children. For example, in Vejle remand prison, special family visiting rooms have been set up.

In summary, it can be ascertained that as far as the physical visiting facilities in the Prison and Probation Service's institutions are concerned and their child-friendliness – or lack thereof – there are very significant differences to the various frameworks of the institution types. Is it an open or closed prison, etc.? There the standard and the conditions vary greatly, also regardless of the institution type. The minimum requirements and the conditions in a number of institutions are, however, clearly insufficient when seen from a child's perspective. It is also, by all accounts, apparent that some of the people who work in detention centres and prisons, as well as police staff and social workers, actually do not think that visits should take place in the Prison and Probation Service's institutions – or at the police station for that matter. A prison officer writes: 'I don't think it's okay that the [children] have to go into a detention centre and be locked inside a visiting room. Hear the keys rattle and gates slamming'.¹⁹⁸ A social worker suggests that: 'Demands must be made that the child may not visit in the prison or at the police station, but that the visits can be held either in the home or a 'neutral' place.'¹⁹⁹ It is very conceivable that these responses are coloured by the visiting conditions in the local prisons or detention centres, which the person concerned knows about. If the starting point is taken in the above mentioned institutions, where improvements have taken place, the majority would probably respond differently. In any event, it can be concluded that in this area a challenge remains in partly raising the minimum standards – what can a child expect of facilities, movement possibilities, toys, etc., by visiting in a prison – and partly to improve the actual conditions in a number of the Prison and Probation Service's institutions.

5.7 The institutions' special events and initiatives for imprisoned parents and their children

'Last Sunday the chaplain held yet another of those terrific relative events. It's simply so fantastic that you can run around and play football with your children.'²⁰⁰ This is how a prisoner describes a family event in Vridsløselille State Prison. According to the deputy prison inspector, Vridsløselille has between four and six family events per year.²⁰¹

In 2009, the State Prison in Renbæk held Shrovetide celebrations with costumes and the 'hitting the barrel' activity for children and the event was a success, which the prison intends to hold again.²⁰² In the State Prison in Jyderup, an annual summer trip to Sweden is held for a number of prisoners and their children.²⁰³ In Jyderup, annual Christmas parties are also held where the employees take along their own children and 'no one can see who is who'.²⁰⁴ This is thought to be atypical for an institution culture, which otherwise tends towards a 'them' and 'us' relationship between the employees and the prisoners – and how many initiatives are quickly shot down, first

¹⁹⁸ Custodial manager J (detention), Smith and Jakobsen (2010) as above

¹⁹⁹ Social worker J (the social authorities), as above

²⁰⁰ Vridsløselille Infonyt (Info news) 15-07-09

²⁰¹ A11. (This is regards prisoners in the general prison population. In addition, prisoners in special blocks also hold events in their block)

²⁰² Directorate for the Prison and Probation Service, Sentence Enforcement Office: »Report on the status of the area, prisoners' children, in the Prison and Probation Service«, Copenhagen 30-11-09, see p. 5

²⁰³ As above

²⁰⁴ A14. See also the Directorate for the Prison and Probation Service, Sentence Enforcement Office as above p.

and foremost in consideration of security?

Such events for the prisoners and their children are rare. Of the participating employees in remand prisons and prisons in the Danish Institute for Human Rights' questionnaire survey, only four persons – or employees in prisons – responded that they had special events for children and their parents.

In Denmark, parent courses or parent groups within the framework of the Prison and Probation Service is not a standard feature. However, a trial has been initiated in this respect. The Centre for Family Development has organised and held an actual parent course in the open Jyderup State Prison and, in 2009, offered a similar course in a closed prison in Vridsløselille, but the latter never gained the needed support from the prisoners and had to be cancelled in the end. A new DIHR national project concerning children of imprisoned parents, funded by the Lego Foundation (Ole Kirks fond) began in 2010. Within this project, 'Children's officers' – who work on securing the rights and needs of children of imprisoned parents – are set up in a number of Danish prisons.

5.8 Prison staff response to children visiting prisons

How the staff in the Prison and Probation Service's institutions treat, especially, children and how they welcome them can be of significant importance. If the children feel – rightly or not – that the employees in the prisons are stern or condescending, this can ruin the visit from the outset and impact on the contact with the parent. The entire staff culture and mood relating to visits is therefore of crucial importance. However, prison research shows that both the staff culture and the general prison culture, which prisoners also contribute to creating, can vary greatly from prison to prison. Important in relation to this, is how the prison functions on a daily basis and whether prisoners experience the prison as dignified and can more or less thrive under the circumstances. Comprehensive research shows that what is quite crucial, in this context, is the relationship between the prisoners and staff, which (in western prisons in any case) is normally, primarily, formed by the latter as they have the power and establish the settings for interaction. The tone and culture, including issues such as use of force by staff, are all essential to the quality of life that is (can be) established in the prison. In her extensive study of 'morale performance', Professor Alison Liebling thus found that 'the relational aspects of a prison's life, and its ethos, were crucial to the prison experience'.²⁰⁵ The entire experience of time in prison was thus 'qualitatively different when relationships in general – or individual transactions – were distant or poor'.²⁰⁶ Ultimately, this was mostly about, not least, the 'attitudes of staff' and the question of whether they treated the prisoners fairly and with respect.²⁰⁷

It is clear that the same mechanisms, to a larger or smaller extent, must apply in relation to relatives' and children's prison visits. If the local staff culture – in a given prison, or among a specific staff group in an individual prison block or in the visiting block – prescribes prisoner treatment that is not respectful and dignified, there is a high probability that this will also rub off on the treatment of visitors. The relatives' association, SAVN, has found that one of the most important aspects for the relatives, adults as well as children, is the way in which they are received by prison staff. 'You can improve the physical frameworks as much as you like, but if the atmosphere is

²⁰⁵ Liebling, A. (2004) *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*, Oxford p. 469

²⁰⁶ As above p. 235

²⁰⁷ As above p. 470

bad and judgemental, then everything else is of no use', believes the founder of SAVN.²⁰⁸

However, there are no fixed rules on how the prison officers should behave towards prisoners' children, or on what the children may or may not take in with them when they come to visit their imprisoned parent. The management in the various institutions has responsibility for these issues. Within the framework of the Sentence Enforcement Act, they have the right to draw up the rules that are to apply in the prison or detention centre concerned.²⁰⁹ There is no doubt that very different procedures exist from institution to institution. The DIHR learned this through several interviews with employees in the Prison and Probation Service and relatives, and it has been confirmed by the DIHR questionnaire survey. For example, there is a great difference in what can be taken into the various institutions. Some places require the supply of a standard letter beforehand. Of the participating remand prison staff, 29 per cent responded in this way, and 22 per cent of the participating prison staff. Of the participating detention centre staff, 64 per cent responded with 'yes', that bringing toys along is allowed, while the same applies to 28 per cent of the prison staff; and according to 75 per cent of the remand prison staff and 39 per cent of the prison staff, a child is allowed to take a drawing in with them.²¹⁰ Especially significant is that 25 per cent of the remand prison staff and 11 per cent of the prison staff responded that it depends on whether staff have time to check what the children want to take in with them for the visit. This means that many children do not even get a clear message about what they may bring along because it can depend on staff resources on the day. Naturally, this can give rise to frustration, as Kristian explains: 'So you're allowed to take a drawing in with you, and then you're not the next time. So you can't take a gift inside one time and then you're allowed to take something along another time anyway and it's just really annoying'.²¹¹

In the DIHR survey, all the participants who work in a remand prison responded and 93 per cent of those who work in a prison responded with denial to the question of whether the institution in which they work has a written set of rules on how one should respond when children are visiting. That the welcoming depends a great deal on the individual staff member is something Maria knows a lot about: 'I wonder who's working in the prison today? My children chat a lot about that in the car', she says.²¹² When one of this book's authors speaks with Marie's son, Kristian, he tells that some of the prison officers are 'unbelievably kind', while others are 'harsh'. Marie explains that one time Kristian began to argue with a prison officer because he was not allowed to take a Pokémon card in with him to show his father. Kristian was told that if he could not understand it, then he just was not allowed to go into the prison. For that period, Kristian began refusing to go on a visit because he thought it was idiotic.²¹³

The experience of being poorly welcomed and the frustration of the insufficient or incomprehensible rules that have to be related to was, in this case, directly damaging to a child's desire to visit his imprisoned parent, which, needless to say, is very

²⁰⁸ E4, Smith and Jakobsen (2010) as above

²⁰⁹ Cf., for example, Retsinformation (Legal information) no. 737 of 25 June 2007 and Guide no. 36 of 25 June 2007

²¹⁰ Visits for some of the remand prisoners takes place, as previously mentioned, at the local police station, where easier rules exist, for example, what may be brought along, which perhaps can explain the great difference between detention centres and prisons in this connection

²¹¹ C1, Smith and Jakobsen (2010) as above

²¹² C3, as above

²¹³ C3, as above

unfortunate. When the DIHR spoke with Marie, she and her children had just had, on the other hand, a really good visiting experience:

*We went to visit yesterday and two female prison officers were working. They were really nice. I really wanted to say to them afterwards: Listen, it is really, really wonderful that you smile and laugh with us, thank you.*²¹⁴

According to the survey, basically none of the prison officers feel equipped, in terms of training, to handle prisoners' children. All of 92 per cent (employees in remand prisons and prisons) responded that relatives play a very small part, or no part at all, in their training. On the other hand, some institutions and employees do larger or smaller things so that the visits are experienced as more pleasant by the visiting children:

*For Christmas last year, we had applied for some money from the detention centre to get Christmas gifts for the inmates' children through the Salvation Army. And when the children came to visit up to Christmas, they were given a gift as if it was the prisoners who had bought them for the children. It made a huge impression to see the happy children's lit-up faces.*²¹⁵

Besides the importance of the prison staff treating visiting children in an appropriate way, the atmosphere the children experience between their imprisoned parent and the staff in the prison is also of importance. The children's experience of how the staff behave towards their imprisoned parent can make a huge impression on them. As a family therapist highlights: 'The behaviour displayed to the imprisoned father, by those officers who meet the visitors is, as far as the children are concerned, the gate into how their father is treated when they're not there'.²¹⁶ A staff member in the Central Block in Copenhagen's Prisons emphasises that it is also about the language and the tone in the prison world in general. He says that many of the employees use 'the prisoners' own language' to the prisoner and it can be difficult to switch tone when children are visiting.²¹⁷

5.9 Security checking of children

Prison staff are especially in contact with prisoners' children in connection with the security checking procedure the children have to go through when they come to visit. In the majority of remand prisons and prisons, this takes place almost like at the airport where a person has to walk through a metal detector. But it also happens that the control is more extensive.

'Yesterday we found heroin in an 11-year-old child's trousers. So the control and frisking becomes more stringent for a period.' This is what the supervisor for the visiting block at Vestre Prison said at a meeting about prisoners' children at the Danish Institute for Human Rights.²¹⁸ Incidents, over which the child has no influence, can mean that suddenly the child has to go through more thorough security checks when he or she comes to visit.

It is self-evident that it is very important how the prison staff handle the control and, particularly, frisking of children. As already described, there are children who find the

²¹⁴ C3, as above

²¹⁵ Custodial manager J (detention)

²¹⁶ A4, Smith and Jakobsen (2010) as above

²¹⁷ A24, as above

²¹⁸ A23, as above

meeting with the prison officers and the security controls they have to go through as something unsettling and unpleasant. Kristian tells about his first visit with his remand imprisoned father in the detention centre: 'The first time was weird (...) and sort of (...) not so comfortable. And the [prison officers] were a little like the police, with uniforms and such. So you didn't want to do anything wrong'.²¹⁹ Kristian has had his shirt pulled up so the prison officer could ensure that he did not have anything stuck to his stomach. 'That's not so nice', he says, and does not want to talk more about this.²²⁰

Another boy, Mads, was sometimes allowed to play football with a soft ball inside the prison when he was on a visit. But he did not like being there. He has also had a bad experience: 'Once I had a gift with me for dad, they destroyed it because they had to see what was inside'.²²¹

A great many of the prison officers in the remand prisons and prisons write that they try to get the children through the control as discretely and gently as possible with games, smiles and humour. They try to create a relaxed atmosphere by chitchatting, crouching down to the child's eye level, showing and explaining: 'We take a great deal of consideration when the children are uneasy. Among other things, we crouch down and show them the handheld metal detector and let them hold it because, usually, that's what they are afraid of'.²²²

This is, however, not always the image you get from the relatives. Sometimes, Marie thinks that the control takes place in an unnecessarily, harsh way:

*I think it's fine to go through a metal detector, but that you have to spread your arms and legs and put up with prison guards who sneer 'turn around!' I think that's very severe for the children. Sometimes we also have to take our shoes and belts off. The children feel as though they're under suspicion.*²²³

5.10 Supervised visits in connection with remand custody

A particularly intense security control arises in the situation where a remand prisoner only has permission for supervised visits. If the remand prisoner is subject to correspondence and visiting control, the police are present during the visit in order to ensure that the case is not spoken about. The police officer who supervises the visit can be either the officer who works on the case or a 'random' officer who is ordered to supervise visits on the day concerned.

One could fear that problems often arise when the same officer who is working on the remand prisoner's case also supervises the family visits. In the questionnaire, the majority of officers find, on the other hand, that it is an advantage and not a problem: 'On the contrary, it makes everything go more smoothly',²²⁴ 'On the contrary, the family can get advice at the same time'.²²⁵ 'Knowledge of each other is an advantage. The remand prisoner prefers this as well. Have never experienced anything different'.²²⁶ Only seven per cent of the participating police officers have actually found that this has

²¹⁹ C1, as above

²²⁰ C1, as above

²²¹ Mads tells his story in MetroXpress, on 16-10-06

²²² Prison worker Z (prison), Smith and Jakobsen (2010) as above

²²³ C3, Smith and Jakobsen (2010) as above

²²⁴ Police Sergeant X (police), Smith and Jakobsen (2010) as above

²²⁵ Deputy Assistant Commissioner Z (police), Smith and Jakobsen (2010) as above

²²⁶ Police Commissioner T (police), Smith and Jakobsen (2010) as above

given rise to problems. In the comment field, one explained that it can result in: 'The arrested person spending time on talking/discussing with the officer instead of with the child'.²²⁷

At some stations, assigned staff are used to supervise visits. This may be a specific, appointed person within the police or an older, reserve officer in plainclothes. An assistant detective emphasises that at his or her station, 'visit friends' are used when the police do not have the time to supervise visits.²²⁸ According to some officers, however, there can be a difference between the younger and the older officers where the younger ones can be a little more rough on the edges.

The police and remand prison staff find, on the whole, that the children are happy to come on a visit. They are perhaps a little insecure the first time, but according to the questionnaire responses, this usually gradually passes once they have been on visits a few times. Some children think it is exciting that the police are present. Others find that the children are, most often, uneasy at visits and/or are afraid of the police. This also depends a great deal on the relationship to the remand imprisoned parent, as is evident from the questionnaire.

Naturally, it is feasible that the remand prison staff and perhaps the police, in particular, who are especially positive about the visiting situation, are coloured in their responses by their part in the case. In any event, it is remarkable that five social workers who have accompanied children to supervised visits perceive the situation differently and described how they have generally found that it has affected the children greatly. The children's reactions are described with words such as 'insecure', 'pressured by the situation', 'trapped' and 'uncertain'. One of the social workers tells about a child who was very sad after a visit because there was a lot he or she wanted to talk about but it was difficult to come out with it, and time was of the essence. Another writes how some children are very embarrassed, some children cry and some children are quiet. Moreover, that there are children who are angry and short-tempered towards their parents and children, who have difficulty in accommodating the fact that the parents are very upset.²²⁹

A family therapist says that many of the children she has been in contact with, at Halfway House Engelsborg, have told her that it has been terrible visiting their parents in a prison or a remand prison:

*They feel there is a slightly unpleasant atmosphere, and then it's boring. There's nothing to do and at the end, you can't find anything more to talk about. If it's a supervised visit, they then become a little shy because they think it's very unpleasant that someone is sitting there and listening to their conversation.*²³⁰

Kristian tells: 'The first prison he, [father] was in, it was just like ARGH! An officer had to stand there and hear what we talked about. We sat in such a small room and it felt as if you were completely surrounded by people you didn't know'.²³¹

²²⁷ Police Sergeant S (police), Smith and Jakobsen (2010) as above

²²⁸ Assistant Detective Å (police), Smith and Jakobsen (2010) as above

²²⁹ The Danish Institute for Human Rights questionnaire survey.

²³⁰ A4. Smith and Jakobsen (2010) as above

²³¹ C1. Smith and Jakobsen (2010) as above

5.11 Solitary confinement

In connection with remand imprisonment in Denmark, a security level exists in addition to correspondence and visit control – that is, pre trial solitary confinement. If the remand imprisoned parent is in solitary confinement, a particularly difficult situation can arise in relation to contact with the children. Denmark – as well as Norway and Sweden – has a special history in this area and actually, the use of solitary confinement during custody is one of the issues for which Denmark has received the most international human rights criticism during recent decades. The fundamental problem is, that when people are put into solitary confinement under conditions where, typically, they remain in their cells for about 22 to 24 hours every day and have minimal access to psychological, meaningful social contact, a great many of them are exposed to a number of negative effects. Hence, the effects of solitary confinement have been the object of numerous studies internationally and in Denmark, which overall witnesses that this form of imprisonment exposes a significant number of the solitary confined to negative health effects. The crucial factor is that the prisoner in solitary confinement is precluded from sufficient, psychological, meaningful social contact.²³² Among the possible negative effects are, not least, anxiety and depression, but solitary confinement can also cause profound mental illness.²³³

Denmark has reacted actively to the criticism so far, as, since the latter part of the 1970s, the use of solitary confinement has been significantly reduced but only to a limited extent have there been attempts to change the solitary confinement regime. Seen from human rights, medical and psychological perspectives, the altogether crucial problem of the Danish practice remains that prisoners in solitary confinement do not get sufficient, meaningful social contact. This conclusion is naturally in keeping with the comprehensive international research on the effects of solitary confinement.²³⁴ The CPT formulates it as follows: '(...) all forms of solitary confinement without appropriate mental and physical stimulation are likely in the long term to have damaging effects, resulting in deterioration of mental faculties and social abilities'.²³⁵

In connection with remand custody, solitary confinement occurs, in the nature of things, very suddenly where the person is arrested and then placed in solitary confinement by which contact to the outside world becomes extremely limited. Both this situation – as well as the possible effects of solitary confinement on a parent – can mean that the situation for children of prisoners is significantly exacerbated.

Solitary confinement of a remand prisoner can, among other things, have the consequence that the contact between the child/children and the parent in solitary confinement is restricted or stops entirely for long periods. However, police officers state that it is normal practice to grant permission for solitary confined prisoners to have visits by their children.²³⁶ The reason for insufficient contact is perhaps often that the imprisoned parent does not want visits. Here, it is very conceivable that the effects

²³² See Smith, P. S. (2006) 'The Effects of Solitary Confinement on Prison Inmates' in Michael Tonry (ed) *Crime and Justice*, vol. 34 p503

²³³ For a summary of the many possible negative effects, see Smith (2006) as above

²³⁴ See Smith (2006) as above

²³⁵ Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 September to 9 October 1996, p. 27

²³⁶ For example, B9 and B10 (telephone interviews on 23/6 2006 and on 29/6 2006). None of them could come up with instances where visiting permission has been rejected for children of solitary confined remand prisoners. See Smith and Jakobsen (2010) as above

of solitary confinement, as already touched on, can play a contributory role. The intense, psychological pressure, which many solitary confined prisoners experience, results, for some, in symptoms such as anxiety, and can develop into a distinct psychological illness.²³⁷ It is obvious that such negative effects can impact the parent role and perhaps result in the lack of will, or ability, to meet with his or her children. That the authorities can contribute in this way to destroying family relationships seems completely inappropriate.

Several of the prisoners Else Christensen interviewed for her survey had experienced being in solitary confinement in connection with remand imprisonment.²³⁸ The majority had experienced it as an intense strain and some say that it affected their contact with their children: 'I was in solitary confinement for seven months and only saw my children after six months. For the first four months, I had a visiting ban (...) I thought that was unreasonable. I felt really bad about that'.²³⁹

If a traumatic experience of an arrest has come immediately before solitary confinement, the parent's apparent, complete disappearance must naturally constitute an even more brutal, psychological event in the child's life and, for instance, create anxious imaginings in the children that the parent is perhaps dead. In the long term, solitary confinement can result in, among other things, rejection by young children of the parent at a later stage.²⁴⁰ There is a clear sense that this could be the case from the following quote from an interview with a mother who experienced being arrested (whilst her husband was arrested), was put into solitary confinement and later released:

They arrived with police cars and took me into prison (...) I was told that the children were at an institution. They said they could detain me as long as necessary. I was in solitary confinement for one month, then yet another month where I was allowed visits, but just not from my husband (...) Then I was told that I was released and that the children would come home (...) The youngest, who was 2 at the time, didn't want anything to do with me. In two months he had forgotten me. That felt very cold. He wouldn't come to me. He went to others when he had to go to the toilet or eat. A week went by where he didn't want anything to do with me and only after 1-2 months, would he have contact with me (...) When we came home, everything looked like I don't know what. No one had been here since I was arrested (...) The flowers had died and everything was just a mess, they had ransacked everything, of course (...) I just broke down. I couldn't cope with anything. For six months I think, I just sat and cried. Finally, my children said to me that enough was enough; now I had to do something (...) But I still cry over the smallest thing.²⁴¹

Psychologist Else Christensen considers that the:

[p]sychological message is that the person in solitary confinement risks losing himself or herself and disappearing into a non-existence. For the children it means that the contact with the parents is difficult and that the possibility of getting care from the parents is strongly limited. In this situation, young children react, like the mentioned 2-year-old, by rejecting the parent.²⁴²

²³⁷ Smith (2006) as above

²³⁸ Christensen (1999) as above p. 44

²³⁹ As above

²⁴⁰ As above p. 45

²⁴¹ As above p. 45

²⁴² Christensen (1999) as above p45

5.12 When visits do not take place - opting out of visits and discontinued contact

As described, children's opportunities for visiting their imprisoned parents and their experience of coming to visit can be very much about the visiting conditions in the Prison and Probation Service's institutions, but also about the children's relationship to the imprisoned parent, or the relationship between the prisoner and other adult relatives who participate in the visit. However, other aspects can come into play. Three other important issues can be of special importance in that regard: a) imprisoned parents who opt out of visits, b) situations where the holder of parental custody does not want the child and the imprisoned parent to have contact, and c) situations where the child is placed in foster care.

These are all very important issues, which can be instrumental in breaking the contact between parent and child altogether. It is, however, beyond the scope of the present report to examine these factors and their possible impact, which has been done elsewhere.²⁴³

The important point is that such factors result in a discontinuation of contact, which can have long lasting consequences. Parents who opt out of visits with their children possibly think that they can 'pick up where they left off' when they have served their sentences. But a great deal indicates that it is not a good solution to put the relationship between children and their imprisoned parent on stand-by while the parent is remand imprisoned or is serving his or her sentence. As described by an American professor in social work:

The practical issue for fathers, however, is that parenting cannot be put on hold to be taken up 'when I get out of prison'. Children grow up; their memories fade or they create new ones through fantasy and imagination. When there is no contact to support an enduring bond, they begin to experience their parents as strangers. Such situations can lead to permanent rather than temporary severance of family ties.²⁴⁴

5.13 Children visiting the Prison and Probation Service's institutions – summary

When a child has experienced, or has been told that his or her father or mother has been imprisoned, most often the child's immediate need is to see that mum or dad is alright. Therefore, it is very important that the child is quickly given the opportunity to visit his or her remand imprisoned or imprisoned parent. For many, this is possible within one week after visiting permission has been applied for. There are, however, institutions where up to a month can pass by and a few cases where it can take several months.

For how long, and how often, prisoners can receive visits can also vary from institution to institution, even though the minimum requirements are complied with in by far the majority of places. But the minimum standards are too low when seen from a child's perspective. For children of prisoners, the visiting opportunities can furthermore depend on the police time and resources, whereas the child's rights in this context have not been taken into account. Hence, there is a problem that the individual child

²⁴³ See Smith and Jakobsen (2010) as above chapter 12

²⁴⁴ Hairston (1998) quoted in Boswell and Wedge (2007) as above p. 26

does not have minimum requirements to see his or her imprisoned parent and, for example, 'can lose' the opportunity to visit one week because the remand imprisoned or imprisoned parent has to have a visit by an adult or by other children in the family.

As a rule, children would like to visit their imprisoned parents, but many children and parents feel that the frameworks for the visit are problematic. In a number of cases, the visiting facilities are experienced as small and ugly and there is nothing to do on a visit. There can be unclear rules and this can give rise to frustration, for example, when a child can take something in to show to his or her father, but is not allowed to do so because one of the 'strict' guards is on duty.

The individual prison worker's awareness of the prisoners' children is very important. A little positive attention can make a world of difference: a smile, crouching down to the child's level, or wearing a Christmas hat in December. As a prison officer in a detention centre writes: 'I once praised a little girl's dress. The girl was really happy and the mother stood there with tears in her eyes because "I was nice". Imagine, that so little can mean so much!'²⁴⁵ – one episode, which also probably explains that a kind and accommodating culture is not always a matter of course in the visiting sections.

There are things that can be done to improve the physical visiting conditions even though the starting point is small rooms that are not, however, suitable. All this will be broached later in connection with a description of a large number of suggestions for improvements for prisoners' children. In any case, there is no doubt that positive development is in progress. Many good initiatives have taken place in recent years. Many institutions, especially prisons, are renovating and making more child-friendly visiting conditions and, at KUC, prisoners' children have become part of the curriculum.

All in all, it must nevertheless be realised that the opportunities for children to visit their imprisoned parents are still strongly limited, seen from the child's point of view, and many complications continue to exist that can prevent or limit visits such as, the detention centre or prison being far from the child's home or that the visiting hours clash with the child's schooling.

6. When dad or mum returns – re-entry and release

A number of special challenges are associated when a parent leaves the prison and meets his or her family and children under more normal terms. The released parent must once again get used to the parent role outside of the prison and children have to get used to having their mother or father home again, or to meet their mother or father in another way than in prison.

6.1 Release, relapse and life after a served sentence

For many years, this has been the object of comprehensive research: how former prisoners cope when they return to the free world. Surveys have, not least, been inspired by the anomaly that, while through history, imprisonment has been thought of as educative and rehabilitating, the case is typically that a large proportion of all prisoners return to prison later. Hence, it is normal that recidivism, that is, relapse to criminality and imprisonment, in a given penal and prison system is at a high level. Of

²⁴⁵ Prison worker I (detention), Smith and Jakobsen (2010) as above

course, the precise figure depends on local conditions, but also to a high degree on how recidivism is calculated. In Denmark, 'how many persons commit new crimes and receive a new imprisonment or suspended sentence within two years after they have been released or have a finished a suspended sentence' is looked at.²⁴⁶ With this definition, recidivism in Denmark can be calculated as being 22 per cent, in 2008; but those with a suspended sentence have also been included. If those with a suspended sentence are excluded, and offenders who have served a sentence of imprisonment are considered, the recidivism in 2008 was 30 per cent.²⁴⁷ In comparison, the British Ministry of Internal Affairs stated in 2002 that 59 per cent of all the prisoners who were released in 1999 had committed new crimes within the subsequent two years. Among young offenders, the recidivism was 74 per cent.²⁴⁸

The reasons for the high relapse can be many and, for instance, could be about the informal punishment that follows in the wake of a served sentence. A long sentence for example reduces the subsequent 'opportunities on the labour market considerably'.²⁴⁹ A drop in income is experienced as a result of the criminality and imprisonment. On the whole, according to recent research, the informal punishment for criminality in Denmark is 'very tough', in the way in which former prisoners are highly likely to be 'marginalised from the labour market'.²⁵⁰ According to one of the authors' surveys, this can be attributed to the fact that stigmatisation of offenders is harsh in Denmark – and perhaps in some ways harsher than in a country like the USA where, in many urban areas, it is quite normal to have imprisoned family members.²⁵¹ It is possible that this is a result derived from having a strong welfare state, which rests partly on a philosophy that the state takes care of all its citizens and, partly, because it is built on a relatively strong alliance between citizen and state. It can be argued that if, in such a society, a person seriously breaks the pact with the state and becomes marginalised, it can be even more difficult to be accepted again - regardless that, basically in all cases, a person would be certain of a financial minimum standard through an extended social safety net.

The high recidivism and the informal punishment as a result of a sentence naturally places all released prisoners in a risk group in purely statistical respects, and is telling of a number of the problems that meet the released prisoners' family and children. Another related question, which has been touched on earlier, is to what extent the imprisonment and its effect on the individual's psyche and personality plays a part when a father or mother is to meet his or her family and children again after the imprisonment. Equally important is the question of whether – or rather, how – the family and children have changed while dad or mum has been in prison.

6.2 When imprisoned parents return

As previously described, many researchers are of the opinion that prisoners can become 'institutionalised' by being in prison. A significant problem is that much of the behaviour and many of the strategies which prisoners often acquire in an attempt to handle prison life better can be directly counter-productive in relation to life outside of

²⁴⁶ 'Kriminalforsorgen – Kort og godt' (Prison and Probation Service – Brief and to the point), p. 10 (updated August 2009). Downloaded from www.kriminalforsorgen.dk

²⁴⁷ 'Kriminalforsorgen – Kort og godt', p. 10

²⁴⁸ See Coyle, Andrew (2005) *Understanding prisons. Key issues in policy and practice* Maidenhead: Open University Press p. 16

²⁴⁹ Tranæs (2008) p. 29

²⁵⁰ Tranæs (2008b) p. 136

²⁵¹ Tranæs (2008b) p. 137

the walls.

Similarly, and equally important is that the family changes as well while dad or mum is in prison. This applies especially to children who, by nature, experience a particular development, as they are not yet formed as adults. The younger that children are at the time of imprisonment, and the longer the imprisonment lasts, the stronger this issue will be in evidence. Development from, for example, 2-4 years old, or 6-9 years old, is particularly pronounced. If a family lives together, this will also have developed in relation to his or her inner relations and will, not least, have been accustomed to daily life outside the prison. Again, according to the previously highlighted British study:

*On release the families had adapted to living without the men and substantial problems and conflicts could arise when they tried to return to family households. The men related to their children in ways that were appropriate to the age the children had been at the time of arrest.*²⁵²

A Danish child psychologist, who has experience with families affected by imprisonment, similarly describes how the family can develop while the prisoners' life has stagnated or perhaps even been pushed back because the imprisonment has made them passive and more antisocial (especially in cases where a long sentence is served), which makes it difficult for them to regain their footing outside of the walls.²⁵³ Some relatives also find that some prisoners bring the tough, masculine environment with them when they are released and this is difficult to combine with family life, and difficult for the family to handle.²⁵⁴

6.3 Great expectations

The problems of returning are not necessarily reduced by many prisoners and their families have great expectations about the release – expectations that are generally far from met. In SAVN, it is often found that both children and parents become very disappointed when the imprisoned parent is released:

*Perhaps the prisoner feels that he is the same, but the family has changed. The children are older, the girlfriend or boyfriend has become more independent and used to managing everything alone. On the other hand, the children have an idea that the family will have a nice time and do fun things all day long.*²⁵⁵

6.4 The 'new' family

A family therapist, from Halfway House Engelsborg, explains: 'Prisoners tell that they experience immense uncertainty about going home. The family has, of course, coped without them and consequently they are uncertain whether there is a need for them at all any more'.²⁵⁶ A child psychologist also explains that there are cases where the changes and the development that have occurred in the family actually come as a surprise to the prisoner because he or she has not been able to follow the

²⁵² Jamieson, R. and Grounds, A. (2005) 'Release and adjustment: perspectives from studies of wrongly convicted and politically motivated prisoners' in Liebling, A. and Maruna, S. (eds) *The Effects of Imprisonment*, Cullompton: Willan. P. 37

²⁵³ D9, Smith and Jakobsen (2010) as above

²⁵⁴ E9, Smith and Jakobsen (2010) as above

²⁵⁵ E4, Smith and Jakobsen (2010) as above

²⁵⁶ A4, Smith and Jakobsen (2010) as above

development at close hand in daily life.²⁵⁷

For the children too, it can be difficult to adapt to the new situation that comes about when the imprisoned parent is released. The imprisonment has changed the family dynamics, emphasises the child psychologist:

When the father, who has been a 'nice uncle' for five years who played Monopoly and ate cake with them in the prison, now comes and demands that you put away your dolls and you must go to bed, can be difficult for children to relate to. And when a father, who has been in prison for many years is released to his family where the eldest boy has become a kind of 'new dad' in the family, it is difficult for both the boy and his father to convert to their, all at once - new – and simultaneously old - roles.²⁵⁸

6.5 Probation

As a rule, after serving two-thirds of the sentence (at least two months must have been served), a decision is made on whether probation should take place.²⁵⁹ A large number of issues, including the prisoner's behaviour during imprisonment, can be of importance to whether probation is granted and it can also depend on a supervision programme run by the Probation Service (KIF). KIF functions partly as a control mechanism in order to reduce the risk of new criminality and partly in a supportive role by keeping informed of the ex-prisoner's circumstances and assisting with personal and social problems.²⁶⁰ In the course of the supervision period, the aim is to create as acceptable social frameworks as possible for the individual.²⁶¹ KIF works with the starting point in an action plan, which contains 11 information points on the released prisoner's circumstances. Unfortunately, children are not given much consideration in this action plan, but are just a sub-point under the point, 'Family and other networks', in which is written: 'Children living at home/away – Relationship to the children'.²⁶² A welfare department head of section and a social worker from KIF explain that, in the action plan, the client, that is, the person on probation is the focus of attention. Special consideration of children is not made and there are no general rules on how a client's children are to be related to. How this is tackled and how this is prioritised in the supervision depends on the individual social worker and, according to two employees, this is not something in KIF's estimation that generally takes up much space in the supervision work.²⁶³ There is otherwise something that indicates that this supervision would be very suitable as a starting point for support and assistance to the released parents in relation to their children. The welfare department head of section and social worker emphasise, namely, that they find that the clients do not have their guard up in relation to them and are more inclined to open up to receiving assistance: 'After all, we have more time to chat and listen than they have at the social administration, for instance'.²⁶⁴

Unfortunately, the development in the course of recent decades has gone in the

²⁵⁷ D, Smith and Jakobsen (2010) as above

²⁵⁸ D9, Smith and Jakobsen (2010) as above

²⁵⁹ Engbo (2005), p. 344

²⁶⁰ The Ministry of Justice's website: About the Ministry: <http://www.justitsministeriet.dk/om-ministeriet/justitsvaesenet/kriminalforsorgen/kriminalforsorgen-i-frihed/>

²⁶¹ The Prison and Probation Service's website: www.kriminalforsorgen.dk under Tilsyn / www.kriminalforsorgen.dk/Default.aspx?ID=249

²⁶² According to the action plan which the Prison and Probation Service in Freedom works from (supplied to the Danish Institute for Human Rights on 10-10-07)

²⁶³ A33, A34, Smith and Jakobsen (2010) as above

²⁶⁴ A33

direction that far fewer prisoners are offered probation after serving two-thirds of their sentences, which, based on a general view, must be deemed as a negative development in relation to the terms for prisoners' children. While, in the period from 1976-1984, 6 to 7 per cent of the prisoners were denied probation with referral to it being 'inadvisable', in 2004, this figure increased to 24 per cent.²⁶⁵

6.6 Re-entry through the Prison and Probation Service's halfway houses

*One can unlearn everything that has been learned in order to cope in the prison environment – and it takes time. Therefore, re-entry is crucial so that one can slowly find the way back [to] life. My family and my network were also important to me when I was released.*²⁶⁶

Clients, especially those under supervision and prisoners who are stationed from a state prison live at the Prison and Probation Service's eight halfway houses. Prisoners can apply to serve their sentence or the last part of their sentence in a halfway house. The sojourn at a halfway house will often be a part of the re-entry into society in the last part of the sentence.²⁶⁷ According to the previously quoted psychology consultant from the Prison and Probation Service, a stay such as this at a halfway house is a really good idea:

*The transition directly from prison to freedom rarely gives good results and therefore, re-entry via the Prison and Probation Service's halfway houses is necessary so that prisoners can be included in the unlearning and learning process that will prepare and help them to navigate in and understand the society they are being released into (. . .) A significant need is seen for re-entry possibilities and optimal, long-term stays at a halfway house where over time, learning towards normalisation occurs and, in so doing, an unlearning of prison behaviour and identity.*²⁶⁸

Among other things, the staff at halfway houses have the task of providing assistance and support to improve the clients' social situation.²⁶⁹ In October 2008, the halfway houses compiled a joint re-entry programme, which unfortunately does not contain one word about children – but which nevertheless has a bearing on children as the programme is about giving prisoners 'relevant, specific and individual guidelines and support', and about supporting prisoners in 'building up and maintaining a constructive network'.²⁷⁰ These are aspects which must concern parents, not least, the relationship to their children.

Some of the halfway houses are particularly aware of the prisoners' children. For example, at four of the halfway houses, the prisoners can have their children with them,²⁷¹ as will be described in more detail in a later chapter. All of the halfway houses in the DIHR survey responded that they always ask new arrivals if they have children and that this is noted in the person's action plans. Moreover, half of the halfway houses responded that there are special events for children and parents in their

²⁶⁵ Engbo 2005, p. 353 f

²⁶⁶ Told by Bari, former prisoner and former resident in the Family House in Engelsborg, see Molbech (2009) p. 30

²⁶⁷ See the Prison and Probation Service's website www.kriminalforsorgen.dk under Pensioner / www.kriminalforsorgen.dk/Default.aspx?ID=16

²⁶⁸ Leavens (2007) p12 f

²⁶⁹ See the Prison and Probation Service's websites on halfway houses: www.pensionerne.dk

²⁷⁰ On the way to freedom – a re-entry programme at the Prison and Probation Service's Halfway Houses. See the Prison and Probation Service's website on halfway houses: www.pensionerne.dk

²⁷¹ See the Prison and Probation Service's websites on halfway houses: www.pensionerne.dk

halfway houses, just as half responded that they have parent courses, parent conversation groups or similar initiatives for prisoners who are parents.²⁷² A particularly exciting initiative can be found in Halfway House Engelborg's Family House, a new institution where, since 2005, prisoners have been able to live with their families and receive family therapy.²⁷³ The Family House began as a trial but has now become a permanent part of the Prison and Probation Service's re-entry programme and has additionally been expanded so that currently there is not one, but two family therapists associated to the house. In addition, a social educator and social worker have special association to the Family House, in which five families can live at a time today.²⁷⁴

The family therapist, who was involved in the Family House from the outset, tells that the special aspect about Family House is the family therapy and the focus that exists on children:

*Since 1979, it has been possible to serve a sentence in Halfway House Engelsborg with the family, but at that time it was at your own risk and no assistance was available. In the Family House there is 24-hour staff, pedagogical staff and family therapy. The idea here is that development can take place with the family whilst they live here. We can utilise the time they are here to create a change.*²⁷⁵

The Family House has various forms of family therapy, which are individually combined for each family. There are interviews with the parent, or parents, on their own, interviews alone with the individual child and interviews with the whole family. The Family House has prisoners who are serving a so-called §78 sentence (alternative sentence) which, for example, could concern a single parent who has been given a three months' sentence who serves the entire sentence in the Family House with his or her child. The Family House also has prisoners who have served long sentences and who have moved into the halfway house, wholly or partially together with his or her family, for the final phase of the sentence.²⁷⁶ The family therapist reports that many families return for follow-up after a concluded sentence and that the follow-up is just as individual as the treatment programmes:

*We also follow-up a great deal on the work in the municipalities to ensure ourselves that they follow up on the assistance provisions we have initiated. Of course, we are fortunate to have contact with many good case workers, but I have some totally hopeless municipalities who do not comply with agreements and which just delay things. So the families need us.*²⁷⁷

According to the family therapist in the Family House, the re-entry provides the prisoner with support in being a father or mother and gives the children a pleasant environment, with a view to getting the family seamed together again:

We become involved with all families and create an important, often necessary, disturbance. We receive some response from parents who say that the stay has given them more self-confidence in their parent role. I am also pretty sure that we haven't had any children out here who have not thrived. Most of the children are relieved for

²⁷² The Danish Institute for Human Rights' questionnaire survey – halfway houses in the Prison and Probation Service

²⁷³ See, for example, Engelsborg's Newsletter no. 2 June 2005

²⁷⁴ A4, Smith and Jakobsen (2010) as above

²⁷⁵ A4, Smith and Jakobsen (2010) as above

²⁷⁶ A4, A6, Smith and Jakobsen (2010) as above

²⁷⁷ A4, Smith and Jakobsen (2010) as above

*the clarification that they will now be here and because it's not at all frightening here as it can be in a prison or the notion of a prison.*²⁷⁸

6.7 Re-entry and release in relation to prisoners' children

The above review shows that it can be very problematic when a prisoner is released and has to go home to his or her family again, or has to resume the relationship to his or her children outside of the prison walls. The expectations can be tremendous – the prisoner's expectations, the children's expectations and the expectations of other possible family members. Perhaps the time before the imprisonment is remembered as being more unproblematic than it was in reality and often the family, the children and the prisoner have changed.

Based on existing facts, it appears that there is only limited focus on these things when a prisoner is released from the Prison and Probation Service. Release can apparently take place without guidance on how the released prisoner can relate, in an appropriate way, to the expectations and the problems that can arise in relation to their children. With probation under supervision, there could also be far more focus on the person's possible parenthood. On the whole, it requires that the person on probation receives support in the event that he or she personally plays an active role in relation to wanting guidance.

In any case, far more can be done to prepare the prisoner for the meeting with the family and children – not least because, in principle, the prisoner would have some good tools in-hand in the form of home leave, stationing and probation (with supervision). In relation to probation, this is an independent problem in that in the course of recent decades, to an increasing degree, two-thirds of prisoners have been denied probation.

Apparently there is more focus on the parental role of the soon-to-be released prisoners in the Prison and Probation Service. This is particularly the case in Halfway House Engelsborg's Family House, where tremendous effort is provided to assist in gathering the family again. But this is a local initiative, which is unique within the frameworks of the Prison and Probation Service.

7. The Danish Study – some concluding remarks

*I could never get hold of him. He was always the one who had to get hold of me, once every week. Well, that is no father role. There is no one you can go to. It's someone you have to wait to come to you. I don't think that's a father role.*²⁷⁹

The following section will briefly review a number of the problems which have been illuminated in this study and highlight some of the most important conclusions. The overall conclusion is that the use of imprisonment is not generally harmonised in relation to how this form of punishment affects prisoners' families and, especially, prisoners' children.

²⁷⁸ A4, Smith and Jakobsen (2010) as above

²⁷⁹ This is 19-year old Anne's story, whose experience was that she really lost her father for those years he served his imprisonment, see <http://www.elbecks.dk/minfarifaengsel/> (taped interview with Anne)

7.1 Arrest

When a father or mother is arrested, this can be the beginning of a very problematic course of events for the child, and the arrest itself can be a significant element in this process. If neighbours and others witness the arrest, this can be the first step in the direction towards feelings of shame and stigmatisation. But, foremost, the arrest of a parent itself can be a very unpleasant and perhaps decidedly traumatic experience for the children who experience it at firsthand. This is clear from the accounts from the affected children and confirmed by the police. Almost half of the participating police staff have experienced children who cry when their parents are arrested and about one-third have witnessed children who cling to their arrested mother or father. A little less than half of the police staff have, furthermore, experienced children who are afraid of the police, and just one-fifth have come across children who have reacted distinctly hostile towards the police. On the whole, this also bears witness that the arrest situation can contribute to creating a hostile relationship between a large group of children and the law enforcement authority which, in the long term, can have very unfortunate consequences. Finally, the police practice seems to vary when it comes to the question of when the social authorities are contacted.

7.2 Remand imprisonment

Remand imprisonment of a parent would, in many cases, constitute a substantial intervention in a family situation and can severely affect any children. Seen in relation to the period in which a parent is imprisoned to serve a sentence, there is no doubt that the period on remand often constitutes a particularly difficult situation, characterised by stress and uncertainty. Some parents choose to keep the remand imprisonment secret and, therefore, some lie to their children in this period, whilst others include the children and try to keep it a family secret. Others are open about the occurrence. Many prisoners' children will, regardless of what they are told, feel that something is wrong and those children who have had close and positive contact to the parent concerned will usually experience it as an uncertain and painful time. Some surveys also indicate that many prisoners' children react particularly violently and have behavioural changes in precisely this period.

In those cases where the prisoner has been responsible for a significant part of the family's earnings, the remand imprisonment could mean that the remaining family members suddenly find themselves in a very difficult financial situation, which naturally can continue throughout the entire imprisonment period if a prison sentence follows the remand imprisonment. Here, in principle, there is the option of seeking help from the municipality, but many are not aware of this or do not want to involve the municipality. There is evidence to indicate that the local municipalities have very different experiences and different practices in relation to helping prisoners' families financially.

Many children also experience shame and guilt in connection with the imprisonment of a parent. A great deal indicates that these feelings can be especially intense and difficult to handle in a remand period, where the disappearance of the parent will come as a shock to many children and where a possibly remaining parent, in many cases, will not have sufficient energy to talk about this with the individual child. On top of this situation, some children will experience stigmatisation and some outright bullying because of the imprisonment of a parent.

In relation to the imprisonment situation itself, the remand imprisonment period is

unique. Generally, there are stricter rules for the remand prisoner's communication with the outside world which, when seen from the children's perspective especially, can create a very difficult situation. Thus, major problems can be connected to maintaining meaningful contact with the remand imprisoned parent and some find this decidedly impossible and inappropriate. Prisoners' children can be far from certain of getting access to visit their remand imprisoned parent within the first week and the normal visiting hours of one hour per week are insufficient, from the child's point of view. Added to this, the visiting conditions in many remand prisons are not suitable for visits by children. When the remand prisoner is subject to correspondence and visit control, the visiting situation would be made even more problematic because a police officer has to supervise the visit. On top of all these problems, a number of practical considerations can be of great importance, such as the distance from the home to the remand prison, transport costs and the placement of visiting hours in relation to school times, etc. A very specific situation can also arise when parents are placed in solitary confinement. On this area, there is a strict practice and history in Scandinavia which, not least, can appear undesirable when children are indirectly affected. A parent, who is exposed to the well-documented detrimental effects of solitary confinement, can thus find it even more difficult to maintain meaningful contact to his or her child.

7.3 Sentencing and setting of the sentence

Receiving a sentence can be a relief insofar as certainty is now established about the character and length of the sentence. However, in many cases this will be sad news for the child and especially if the parent is to be imprisoned for a longer period. In all circumstances, the imprisonment, its length and, not least, the choice of prison, will be of crucial importance to the future possibilities of contact between the child and the imprisoned parent. The existing data, however, indicates that the circumstances of prisoners' children and needs are not taken into consideration to a sufficient degree. It is also clear that the offender's person and deed must, of course, be focused on when sentence is passed. Added to this, as a basis, offenders should be punished equally for comparable crimes. That said, it is standard practice to take also into consideration information about the offender, which can include the family situation, among other things. In consideration of this and the international human rights recommendations on the area, it should be considered to a higher degree than up to now, to let consideration of prisoners' children play a part in connection with sentencing and choice of sentence and prison.

7.4 Imprisonment

When a parent's imprisonment commences, how contact between the child and parent will be able to develop depends a great deal on the conditions and the organisation in the individual prison and its location in relation to the home. In the majority of prisons, it is possible to arrange visits within a week, but that depends on the specific institution. Some places can have a waiting period of several weeks and, in some cases, a month or more. On the other hand, the possibilities for prolonged visits are generally far better than in remand prisons and at most places it would be possible to meet for several hours at a time or perhaps several times per week. The standard of the visiting facilities and the activity options available also vary, but in a number of prisons and remand prisons significant material improvements have been made within recent years. However, there are still significant differences in the standard from institution to institution. There are options for overnight stays with the family in some places and, in some open prisons, the prisoner and his family can move freely in the prisons' green

areas. In many remand prisons, the typical visiting situation is still characterised by time spent together in a barren visiting room where it can be difficult to have meaningful children's activities.

In any event, what remains is that the visiting situation in a prison can seem frightening and can be difficult for many children even though many are clearly very pleased with the possibility of seeing their imprisoned parent. Among other things, the control procedures, the entire prison atmosphere, and the staff and prison culture can be of tremendous importance in this connection. In this sense, bad visiting facilities and friendly and kind staff are far more preferable than the reverse. However, a great deal indicates that the staff culture and the tone towards prisoners and their relatives can vary greatly from institution to institution, from division to division and from employee to employee. In this connection, it is relevant that by far the predominant part of the participating employees in remand prisons and prisons believe that the handling of relatives has played a very small role, or no role at all, in their training. Fortunately, within recent years, improvements in the training of prison workers have improved.

In addition to the actual visit, a child can maintain contact with his imprisoned parent via telephone calls and correspondence. The latter is not a standard form of communication for the majority of children today and telephonic contact is often hindered by the prisoners' limited access to the prison's telephones.

Last, but not least, a children's perspective of our utilisation of imprisonment illustrates how tremendously difficult it can appear to give the prisoners the opportunity to take responsibility for their own existence and significant personal goals and tasks, while simultaneously serving their sentence. In this connection, it is naturally of quite crucial importance that an imprisoned parent has the possibility of taking responsibility as a parent to as great an extent as possible within the frameworks of the sentence – as long as it is in the child's best interests, of course. But unfortunately, the reality is that this is extremely difficult. For instance, prisoners' children can normally not even be allowed to take their schoolbooks with them on prison visits, which would otherwise be an obvious opportunity for the imprisoned parent to keep up with the schooling, help with some homework and thus play an active parental role.

7.5 When contact is not in the child's best interests

In some cases, for example, where an imprisoned parent has committed abuse in the home or has violently harmed his family in another way, it may be best for the child if contact stops and perhaps completely discontinues. This naturally applies in all family connections where a parent does not live up to his or her responsibility in any way, regardless of whether prisons and imprisonment are involved. When this is relevant, it is essential that competent authorities step in and remove parental custody. But in a number of cases, this situation will not arise while, however, it would be possible nevertheless to question whether the one or other form of contact between the child and the imprisoned parent is desirable, should be limited, temporarily discontinued or completely cease. Even though research points in the direction that contact is tremendously important in consideration of the child in the majority of cases, it is essential to remember, and to take into account, that this is not always the case.

7.6 Release

The entire process around release from prisons and the return to society has long been

studied and discussed with a view to reducing reoffending. But for the family and the affected children, a parent's return is naturally of very great importance and, in a very direct way, especially when this is a family that lives together. Unfortunately, inconsistency can easily arise between the great hopes which many children have for the reunion and the daily life that actually comes into play. It can be difficult for an individual who has adjusted his or her behaviour and personality to daily life in prison, to return to a family and parent situation where he or she must constantly take responsibility, handle emotions and relate to close relatives. Research shows how this can fail and how, for example, the contact between children and parents can prove to be damaged in a way that can be deemed irreparable in relation to the character of the earlier relationship. Therefore, it is of crucial importance to improve the release process so that the family and the children are taken into account to a broader extent. There could be better use of home leave options, more consideration of prisoners' re-integration, increased family contact before release and advice and support following release.

Chapter 5: The Northern Ireland case study

By Linda Moore, Una Convery and Phil Scraton¹

1. Introduction: the context of imprisonment in Northern Ireland

The impact of imprisonment on children and families in Northern Ireland has to be considered within the context of a transitional society emerging slowly and unevenly from violent conflict. During the armed conflict, from 1969 until the ceasefires in the mid 1990s, over 3,700 people were killed, 40,000 injured and many thousands of families were made homeless, bereaved and traumatised.² Most were killed by Republican or Loyalist paramilitary non-state violence and 11 per cent by state forces.³ Allegations persisted through the Conflict of state collusion with loyalist paramilitaries. Fitzduff and O'Hagan conclude that of Northern Ireland's population of 1.5 million, 'the number of people closely associated to those who were killed or injured is about half the population'.

Imprisonment in Northern Ireland was shaped by the Conflict. During the most violent years of the 1970s and 1980s there was a high rate of imprisonment with large numbers of politically-affiliated prisoners, often serving long or life sentences.⁴ Twenty-nine prison officers were killed by paramilitary organisations and many officers and their families were intimidated in their communities and were forced out of their homes. Throughout the Conflict the prison system in Northern Ireland was used for the detention of two distinct groups of prisoners: politically affiliated prisoners (charged with 'terrorist' offences scheduled under emergency legislation and convicted without jury trial) and 'ordinary' prisoners remanded or sentenced through normal due process. Until 1976, prisoners affiliated to paramilitary groups were granted 'special category status', effectively a form of political status. These prisoners organised and controlled their prison wings and operated through a clearly defined, militarised structure.

In 1976, the British state introduced the policy of criminalisation, with the intention of treating paramilitary prisoners as 'ordinary criminals'. Politically-affiliated prisoners, for example, were required to wear prison clothes and do prison work. Prisoners resisted the criminalisation policy, refusing to cooperate with the regime. In 1981, ten Republican prisoners died during a hunger strike against the policy of 'criminalisation', demanding the right to be recognised as political prisoners. The hunger strikers were supported by a mass movement within Catholic/Nationalist communities in the North, including the April 1981 election of hunger striker, Bobby Sands as a Member of the UK Parliament (MP) for the Fermanagh/South Tyrone constituency. Following the hunger strike, the prison authorities made some concessions meeting some of the hunger strikers' demands without formally conceding their demand for political status.

The release of political prisoners was a key element of the peace negotiations leading to the 1998 Good Friday (Belfast) Agreement. Prisoners affiliated to organisations that had declared ceasefire were granted early release as part of the Agreement. However,

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² McGrattan, C. and Edwards, A. (2010) *The Northern Ireland Conflict*. Oxford: One World Publications p. xviii

³ Fitzduff, M. and O'Hagan, L. (2009) *The Northern Ireland Troubles: an INCORE background paper* Available at <http://cain.ulst.ac.uk/othelem/incorepaper.htm>

⁴ McEvoy, K. (2001) *Paramilitary Imprisonment in Northern Ireland: Resistance, Management and Release* Oxford: Clarendon

prisoners from some Loyalist and 'dissident' Republican organisations continued campaigns of violence and a significant number of prisoners affiliated to paramilitary organisations remain in high security units at Maghaberry Prison (although these prisoners remain a minority of the overall prison population).⁵ Following the Agreement, the state had attempted to integrate these prisoners into the normal prison regime, but this led to conflict within and outside the prison. The 2003 Steele Review Report recommended that prisoners affiliated to paramilitary organisations should be held separately from ordinary prisoners and that Loyalist and Republican prisoners should be accommodated separately to ensure safety within the prison regimes.⁶

Research focusing on the experiences of the families and children of politically affiliated prisoners reveals significant differences from the experiences of ordinary prisoners. McEvoy *et al* note that families of politically motivated prisoners often experienced community pride and respect⁷. Yet, other studies show that families continue to experience difficulties and distress caused by the imprisonment of their family member. Spence's research with Loyalist ex-prisoners' children found psychological, social and physical aspects, including depression, anxiety, panic attacks, feeling confused, worried, lonely or helpless.⁸ Jamieson and Grounds' study with Republican prisoners' families found that children were usually aware of the imprisonment but were not always informed of the actual or alleged offence.⁹ Hall's research with young people involved with the Tar Anall prisoners (Republican) self-help organisation found that they experienced a 'whole spectrum' of emotions 'from negative feelings of fear, anger, withdrawal and resignation, to more positive ones of hope, fortitude and resilience'.¹⁰ As children, these young people had witnessed parental arrest and imprisonment, including frequent house raids and searches by the police and army. They had contrasting views about whether their fathers and mothers had suffered or died for a worthwhile cause. Despite widespread community support for Republican prisoners, some had experienced bullying and stigma as a consequence of parental imprisonment. In 2005, Hall conducted follow-up research with young people from Tar Anall. He concluded that after a decade of relative peace:

*For many young people, one set of problems has just been replaced by another. The impact of youth suicide, rampant anti-social behaviour, punishment beatings and the lingering legacy of sectarianism, are just as worrying realities for today's young people as the conflict was for their predecessors. It is sad that eleven years after the ceasefires our children still do not have the carefree and nurturing society which they so much deserve.*¹¹

A decade on from the mass release of politically-affiliated prisoners, the arrival and consolidation of the Northern Ireland Assembly and the 2010 devolution of justice and

⁵ In the week ending 8 April 2011 there were 28 Republican prisoners in Roe House and 19 Loyalist prisoners in Bush House, Maghaberry Prison. Figures from Northern Ireland Prison Service at <http://www.niprisonservice.gov.uk/module.cfm/opt/11/area/Situation%20Reports/page/situationreports/> Last accessed 15 April 2011

⁶ Safety Review Team (2003) *Review of Safety at Maghaberry Prison* Belfast: NIPS

⁷ McEvoy, K., O'Mahony, D., Horner, C. and Lyner O. (1999) 'The Home Front: The Families of Politically Motivated Prisoners in Northern Ireland' *British Journal of Criminology* 39(2) pp. 175-197

⁸ Spence, L. (2002) *Unheard Voices: The Experiences and Needs of Children of Loyalist Political Ex-Prisoners* Belfast: EPIC

⁹ Jamieson, R. and Grounds, A. (2002) *No sense of an ending: The Effects of Long Term Imprisonment amongst Republican Prisoners and their Families* Monaghan, Ireland: Seesyu Press

¹⁰ Hall, M. (2000) *Left In Limbo: The Experiences of Republican prisoners' children*. Island Pamphlets No 31. Newtownabbey: Island Publications p. 3

¹¹ Hall, M. (2005) *Still in Limbo: An Exploration by Young People from Tar Anall Youth Project* Island Pamphlets No 74. Newtownabbey: Island Publications p. 3

policing to the Assembly, the legacy of the Conflict remains significant in the operational policies and regimes within the prison system. The prison service has not recruited full grade prison officers for over 16 years. Consequently, most prison officers currently working in the system were recruited during the years of greatest conflict. The Criminal Justice and Prisons inspectorates, the Independent Monitoring Boards (IMB) and the Northern Ireland Human Rights Commission have each identified the serious failure of the Prison Service to adapt to the complex needs of a prison population significantly different from the 1970s-1990s. In a recent inspection of corporate governance, the Criminal Justice Inspection for Northern Ireland (CJINI) stated that the Northern Ireland Prison Service (NIPS) has 'remained relatively untouched' by reforms in the criminal justice system and has established 'a culture, behaviours and working practices' that are 'difficult to change'. As an organisation, it is 'struggling to change with the times' and requires a 'transformation' of the way in which it works.¹² The key issue here is whether it has lacked the capacity and understanding necessary to generate change or whether there is reluctance and resistance, particularly among prison staff, to develop working practices and skills essential to a reformed organisation.

In February 2010, the multi-party Hillsborough Agreement provided the basis for the devolution of policing and justice to the local elected Assembly, including a much-anticipated review of the prison system. The Agreement included provision for 'learning from international best practice in matters of criminal justice'; 'a review of alternatives to custody'; 'adequate provision of diversionary alternatives to prosecution'; review of the powers of the Prisoner Ombudsman; review of 'conditions of detention, management and oversight of prisons', 'consideration of a women's prison, which is fit for purpose and meets international obligations and best practice'. An independent review team was appointed in June 2010 headed by former Chief Inspector of Prisons for England and Wales, Dame Anne Owers. An interim report was published in February and the review team will make a final report later in 2011.

2. Northern Ireland prison establishments

Northern Ireland has three prison establishments: Maghaberry Prison, Magilligan Prison and Hydebank Wood Prison and Young Offenders' Centre. These are Prison Service establishments under the Department of Justice. There is also a custodial centre for children aged 10 to 17: Woodlands Juvenile Justice Centre, a Youth Justice Agency establishment, also under the Department of Justice.

2.1 Maghaberry

Built as a maximum-security prison, Maghaberry was opened in 1986 (the Mourne House Women's Unit) and 1987 (the male prison). In 2004, women prisoners were moved from Maghaberry to Ash House, a unit inside Hydebank Wood Young Offenders' Centre for young men. Maghaberry is the North's only adult male committal prison. In terms of its population, the prison is diverse and complex. It accommodates all categories of male prisoners, including those on remand, those serving short sentences and those serving long sentences, including life. It also has two houses dedicated to politically affiliated prisoners: Loyalist and Republican. Whilst the inspectorates recognise that this diverse population requires different security levels, all

¹² Criminal Justice Inspection Northern Ireland (CJINI) (2010) *Northern Ireland Prison Service Corporate Governance Arrangements: An inspection of corporate governance arrangements within the Northern Ireland Prison Service*. December (2010). Belfast: CJINI pp. v-vi

prisoners are subjected to maximum security conditions. 'Thus someone serving five days for fine default receives the same security regime as someone serving a 10-year-sentence for serious assault'.¹³ Inevitably, the imposition of blanket high security conditions has significant ramifications for prisoners' families, particularly children.

Maghaberry is located in a rural setting 20 miles southwest of Belfast, 73 miles southeast of Derry and 30 miles north of Newry. While close to the M1 motorway travelling by public transport is difficult. A free bus service runs from Lisburn railway station twice a day, morning and afternoon. Other transport is offered by voluntary organisations, supported by funding from the prison service. As a maximum-security prison, Maghaberry is a forbidding place, especially in bad weather. Irwin describes Maghaberry Prison as 'a large and imposing complex, oppressively grey, surrounded by barbed wire and security cameras, with guards and sniffer dogs on patrol'.¹⁴

Visitors arrive at a purpose-built visitors' centre outside the prison, a modern facility independently managed and staffed by the Quaker Service. It is warm, well equipped and the centre staff are supportive and understanding. Visitors can access advice, information and personal guidance in confidence. Food and drink are available and there is a small crèche. Given the distances travelled, the Centre provides an opportunity for families to prepare for their visit. The Quaker Service has plans to further develop the Centre to offer a greater range of support to families.

Visitors either walk, or travel on a bus, from the Centre to the prison gates, where they are admitted for a 'rub down' search and a 'passive drug dog' search. If the drug dog indicates that a visitor might be carrying drugs, or might have had recent contact with drugs, the visitor is offered a closed visit. A closed visit is in a divided room, the prisoner on one side of a glass partition, his visitors on the other side. Alternatively, the visitor leaves the prison. The 2009 inspection, for the second successive occasion, recommended that closed visits 'should not be imposed automatically on a single dog indication without any supporting intelligence or consideration of alternative operational procedures'.¹⁵

Visits are held Tuesday to Friday. There are three one-hour sessions each morning and two each afternoon. Separated visits are held for one hour twice a day. A regular complaint, supported by the inspectorates, is that while visitors arrived in the visits room on time, prisoners were often delayed, cutting short their entitled visit. The Prisoner Ombudsman has also noted concerns about visits being shorter than planned and recommended that every effort should be made to ensure that this does not happen.¹⁶ The capacity of the visits room has been recorded as inadequate by the Inspectorate and the most recent inspection concluded, 'The visits room accommodating the majority of prisoners (despite previous recommendations) was unchanged and continued to be cramped, with fixed furniture, and was noisy with little privacy between groups of prisoners'.¹⁷

Child-centred Visits are offered to selected long-term prisoners to enable prisoners to have personal contact with their children or grandchildren. Fathers and grandfathers serving a life sentence or a determinate sentence and those who have been on remand

¹³ HMIP/CJINI (2009) *Report of a full unannounced follow-up inspection of Maghaberry Prison 19-23 January 2009*. Belfast: CJINI. P. v

¹⁴ Irwin, T. (2008) 'The "Inside" Story: practitioner perspectives on teaching in prison' *Howard Journal of Criminal Justice* 47(5) p. 515

¹⁵ HMIP/CJINI (2009) p. 95

¹⁶ Prisoner Ombudsman for Northern Ireland (2010) *Inside Issues* Belfast: Prisoner Ombudsman

¹⁷ As above p. 96

for over three months are eligible to apply. Prisoners charged with, or convicted of, sex offences and those subject to a court order restricting access to their children are barred from applying. These visits operate over lunchtime on Saturdays, with families on the scheme allocated one visit each month. However, staffing issues or public holidays often delay access, in some cases by several weeks. In practice, the situation is complicated by the need to provide separate child-centred visiting arrangements for Republican, Loyalist and ordinary prisoners.

Child-centred visits are supported by Quakers' staff and by Family Support Officers. Following the regular visit, the visits room and the play area are available for prisoners to play with their children. Lunches are provided for mothers and carers in a separate room where they meet together with family support officers. There are no age restrictions on children, and visitors bring books, photographs and toys, which are also scanned for drugs. Whilst these visits are well organised, they are suitable mainly for younger children. There are few facilities for older children. The limitation on numbers results in only a small proportion of prisoners, approximately 30, being able to participate in the Scheme.

2.2 Magilligan

Opened in 1972 as a 'compound prison', Magilligan had its original Nissen huts and compounds removed in the early 1980s, but the single-storey H-blocks remain, holding the majority of its population without in-cell sanitation and giving the appearance of a prison camp despite some modern additions to the buildings. As a prison holding sentenced male prisoners with six years or less to serve, its population is drawn from the length and breadth of Northern Ireland. Yet the prison is located in one of the most inaccessible sites in Northern Ireland. Magilligan Point is 90 miles north of Newry, 67 miles north-west of Belfast and 25 miles north-east of Derry. Beyond the northern perimeter fence sand dunes form a natural barrier between the prison and the sea and a military firing range. Other than accessing a small ferry across Lough Foyle, the only traffic on the narrow approach road connects the prison to the world outside. It is a desolate and remote location, poorly served by public transport. Visiting the prison from most towns involves a full day, expensive return trip that on public transport requires a combination of buses, trains and taxis. The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) also services the prison via minibuses.

Visiting Magilligan for the first time is daunting and intimidating. There is no car park, but an off-road, unsurfaced patch of ground that in wet weather gathers pools of water. A small, well-used portakabin is the visitors' centre. It houses the NIACRO office, a coffee/tea bar, a room with tables and chairs, and toilets. The cold and bleak physical environment contrasts to the welcoming and friendly NIACRO staff. Visitors make a short walk from the portakabin to the prison entrance where they must stand at the prison gate, often for some time. Entering the prison, visitors pass through five gates. On each side of the path, and within the main prison wall, are high double fences topped with razor wire. The metalwork is discoloured by rust and the patches of ground between the fences are overgrown.

A covered walkway leads to the visits building. Midway along the walkway is another small portakabin designated as the 'Families Contact Office'. This is the cramped office of Magilligan's sole Family Support Officer, a prison officer who supports and cares for families. Leaving the walkway, visitors enter the visits building, another prefabricated block in keeping with the appearance of a prison camp. Once checked in, their personal possessions placed in lockers, visitors move through a security check similar to airport security. They stand at designated places and a dog and its handler move

between them for a 'passive drugs test'. Having cleared security, visitors enter a small reception area adjacent to the visits hall. Here, adults and children aged 16 and over provide a biometric hand print. Once cleared, they enter the hall.

The visits hall is rectangular, accommodating three rows of low tables, each with three or four fixed seats. Chairs coloured green are for prisoners, blue for visitors. At each end of the hall are raised observation stations staffed by prison officers, their closed-circuit television (CCTV) monitors displaying coverage of the visits. In a corner of the hall is a small well-equipped crèche staffed by two workers. Adjacent to the crèche are two PlayStations for older children. To the side of the hall is a small kitchen servicing the visits with drinks, sandwiches, biscuits and other snacks. At one end of the hall a door opens onto a narrow corridor in which are the closed visits cubicles (for those prisoners subject to closed visiting conditions). Inside, separated by a glass partition, the prisoner and his family communicate by a single telephone; there is no natural light and no air conditioning. The small space is stifling and claustrophobic, impossible for young children.

Prisoners are entitled to one visit and three 'privilege' visits every four weeks. Privilege visits can be withdrawn from prisoners should they breach prison rules. Child-centred visits are organised by the prison service in association with NIACRO. As in Maghaberry, at Magilligan these are monthly, and 10 fathers are allocated each Saturday extending the opportunity to 40 fathers at any given time. Selection depends on: length of sentence; conviction; absence of restriction orders; release and home leave dates; regime placement; frequency of contact; age of children; completion of the internal parenting programme; agreement with family. The organisation of child-centred visits is consistent with Maghaberry. At Magilligan, families are given the opportunity for a short tour of the prison accompanied by the Family Support Officer, to have some experience of living conditions, education, workshops and recreation facilities.

The most recent inspection of Magilligan¹⁸ noted that the 'general environment of the prison was marred by too many oppressive fences and wire, as well as old and badly planned buildings, including Nissen huts'. For prisoners, this 'hampered movement and the lack of cover for getting around a large site in bad weather was a particular problem'. From our observation of visits, this problem extended to families. In poor weather, mothers and children often arrived in the visits hall cold and wet. The Inspectors noted the lack of shelter for families at the gate to the prison. They also commented on the 'particularly dangerous' access to the prison caused by the lack of adequate carparking.¹⁹ Whilst the visitors' portakabin provided support, information and refreshments, the toilet facilities were 'inadequate'.

2.3 Hydebank Wood

Hydebank Wood Young Offenders' Centre and Prison (for women) is located in a wooded area five miles south of Belfast, 76 miles west of Derry and 38 miles north of Newry. It is the only prison for young offenders (including children) and, since 2004, one of its units has accommodated all women prisoners in Northern Ireland. Relatively close to Belfast city centre, Hydebank Wood is served by a public bus service and by a Probation Board for Northern Ireland (PBNI) bus for families who have difficulty with public transport. However, families from the western and northern towns have a significant journey, often four hours each way. There are five visiting sessions each day, Tuesday to Saturday, and four on Sundays.

¹⁸ HMIP/ CJINI (2010) *Report of an Announced Inspection of Magilligan Prison 29 March -2 April 2010* p. xi

¹⁹ As above p. 64

Visitors arrive at the visitors' centre which is part of the prison building and is run by NIACRO. In the visitors' centre, they can have refreshments, use the toilet facilities and get advice from the helpful and well-informed NIACRO staff. From there, visitors make their way into the prison security system. On their first visit, visitors provide photographic identification; they are photographed and have their hand biometrically scanned for identification. Following positive identification and storing any non-permitted items in lockers, visitors enter through an electronically controlled door, walk through a metal detector and receive a body search and a 'passive drugs test' (by a prison dog). Following a final check on their details, they enter the visits hall. The hall has 18 fixed tables and chairs and is often crowded and noisy, with a crèche to one side. Women prisoners receive visits at one end of the hall but at the same time as young male prisoners.

Child-centred visits are also offered at Hydebank Wood. They are accommodated in a family room in the new visits centre, equipped to provide a suitable environment for families. Women prisoners can apply to participate in an Extended Visits Scheme to allow up to six hours unsupervised with their children in a mobile unit adjacent to the Ash House Unit. Whilst child-centred visits are currently restricted to prisoners who are parents, the prison service is committed to extending the scheme to include young prisoners who request a family visit. Successful applications for the current scheme are subject to a child protection check with social services. It operates similarly to the schemes at Magilligan and Maghaberry but has additional provision for young parents who have had minimal experience of parenting and who are often fathers of very young children. Mothers or carers who accompany the child are accommodated in the visits area throughout the child-centred visit.

The Independent Monitoring Board's most recent report noted that while NIACRO staff 'provided valuable support to prisoners' visitors on practical and emotional levels' and family support officers 'endeavoured to make the child-centred and family visits meaningful and enjoyable', women prisoners mixed with young male prisoners at visits was 'another negative feature of Hydebank Wood's shared site'.²⁰

3. Methodology

The research for the Northern Ireland case study was conducted primarily through qualitative research methods. It included:

- literature review of academic research and related sources;
- review of relevant human rights legislation and standards;
- analysis of the legal framework and statutory policies which may impact on prisoners' families;
- secondary analysis of available official statistics and surveys published by non-governmental organisations;
- focus group interviews and semi-structured interviews with: professionals; prison managers and officers; prisoners' representative groups; spouses, partners and families of prisoners; prisoners who are parents and former prisoners who were parents at the time of their imprisonment;
- primary research with prisoners' children and siblings aged 6 to 17, including focus groups and interviews;

²⁰ Independent Monitoring Board (IMB) (2010) *Independent Monitoring Board's Annual Report for 2008/09* Belfast: IMB p. 38

- analysis of questionnaire responses by families, conducted in a prison visiting centre provided by the Quaker Service.

To conduct the research it was necessary to obtain ethical approval from the Office for Research Ethics Committees Northern Ireland, security clearance from the Northern Ireland Prison Service and child protection clearance through Access Northern Ireland. Ethical approval was granted in March 2010. Security clearance was granted in September 2010 and access to the prisons to conduct primary research in each of Northern Ireland's three prisons agreed from October 2010.

The research was initiated with the Northern Ireland Prison Service, professionals and non-governmental organisations (NGOs). A 'snow-ball' technique was used to maximise participation in the study. NGOs and other relevant organisations assisted with access to potential research participants who were provided with an information sheet giving details of how they could participate. A similar approach was adopted within prisons and information leaflets provided for prison staff and prisoners explained the research and gave details of the research team and how to participate. An interview schedule highlighted key issues to be covered in interviews. Participants were also encouraged to discuss other issues they considered relevant.

Interviews and focus groups were conducted with a range of professionals, including representatives from the police, prison and probation services, prison chaplains, chairs of the local Independent Monitoring Boards and representatives from the following NGOs: NIACRO, Extern, Barnardos, Prison Fellowship, Quaker Service, Action for Children and Coiste na nIarchimi. Researchers observed the work of Family Support Officers (prison officers) in Maghaberry and Magilligan and met prisoners' family support groups in Hydebank Wood, Limavady and Ballymena. Individual interviews and focus groups involving over 25 parents and 14 children in the community, six prisoners in Maghaberry, and individual interviews with four male prisoners in Magilligan. The researchers observed child-centred visits and children's parties in Maghaberry and Magilligan prisons. The Quaker Service assisted the study by including research questions within their larger survey of visiting arrangements. Advocacy and information sharing were also important within the project. There is a well-established interagency group of bodies working with prisoners' families in Northern Ireland involving the statutory and non-governmental sectors. As part of our contribution to information sharing and advocacy we hosted two meetings of this group, bringing guest speakers from England and Scotland as well as making presentations on our own research. This provided an opportunity to feed back initial findings and recommendations and to draw on discussion groups and workshops involving participants.

4. Research findings

4.1 Information on children with parents in prison

It is difficult to ascertain an accurate figure for children affected by imprisonment in Northern Ireland. The Northern Ireland Prison Service estimates that at any moment approximately 1,500 children have a parent in prison. It records approximately 120,000 visitors entering prisons each year, of which an estimated 36,000 are children.²¹ The

²¹ Northern Ireland Prison Service (2010) *Safeguarding Children Framework and Guidance Policy*. Belfast: NIPS p. 48

'Visitor and Inmates Recognition Bookings System' system now records 'name, age, address and nature of relationship of child to prisoner' and this may allow the production of more detailed statistics in future, although the more stringent procedures for entering a prison also create problems of access and privacy, as discussed below.²²

The current failure to record accurate statistics on children impacted by imprisonment in Northern Ireland poses a serious problem especially regarding identification of, and provision for, their needs.

4.2 The legal context

In 1991, the United Kingdom (UK) ratified the United Nations Convention on the Rights of the Child (CRC) yet it has not been incorporated into domestic legislation in any UK jurisdiction. The European Convention on Human Rights (ECHR) was incorporated into domestic law through the Human Rights Act 1998.

Article 2 of the CRC requires that children are free from discrimination in exercising their rights. Section 75 of the Northern Ireland Act 1998, which followed from the Belfast/Good Friday Agreement, contains a potentially powerful equality measure, which places an obligation on public authorities (including criminal justice agencies) to promote equality of opportunity for a range of categories, including age. Public authorities are required to screen policies for potential negative differential impact and to conduct an equality impact assessment when a policy potentially could have a negative impact. The potential of this tool has not yet been used effectively to assess the impact of prison policies and practices on children affected by familial imprisonment, but the opportunity is there to do so.

The legal context for the provision of services to children in need in Northern Ireland is provided by the Children (Northern Ireland) Order 1995 which applies to all children and young people under the age of 18. The Office of the First Minister and deputy First Minister (OFMDFM) for the devolved Northern Ireland Assembly has produced a ten-year Children and Young People's Strategy.²³ This commits government to 'recognise the complexity of children's lives by adopting a 'whole child' approach in all areas of policy development and service delivery relevant to children and young people'.²⁴ The Strategy refers to the prison service Resettlement Strategy as a 'driver for change'. It cites family prison visits, the 'book and tape' club for prisoners' children and parenting programmes in prisons as examples of positive practice.²⁵ However, there are no targets set within the Strategy for identifying how many children experience the imprisonment of a parent, nor is there any identification of these children's needs or specific targets for meeting their needs. The Northern Ireland Children's Services Plan 2008-2011, produced by four Area Children and Young People's Planning Committees, makes reference to children with imprisoned parents only within the context of meeting the needs of children with 'emotional, psychological and behavioural difficulties'. Under the heading, "Living in Safety and with Stability", a key indicator provided is the number of children with a parent in prison, but there is no target given for reducing this number nor how the number will be measured.²⁶ The Children's Services Plan prioritises the

²² Information from unpublished correspondence from the Northern Ireland Prison Service to the research team, 13th April 2011

²³ Office of the First Minister and Deputy First Minister (OFMDFM) (2006) *Our Children and Young People - Our Pledge: A ten year strategy for children and young people in Northern Ireland 2006-2016*. Belfast: OFMDFM

²⁴ As above p. 14

²⁵ As above p. 53

²⁶ Eastern, Northern, Southern and Western Areas Children and Young People's Committees (2008) *Northern Ireland Children's Services Plan 2008-2011* p. 31

percentage of parents accessing the Family Links Service, a service run by the NGO NIACRO for families with members in prison.²⁷ While there is awareness among statutory agencies of the problems faced by children with imprisoned parents, there remains inadequate information and lack of planning to meet children's needs.

The legislation governing prison regimes is the Prison and Young Offender Rules (Northern Ireland) 1995. Part VII focuses on social and family relationships, communications, letters and visits. Rule 65 requires that 'special attention' is given to the maintenance of relationships between prisoners and their families.²⁸ Prison governors must ensure that officers with responsibility for prisoner welfare are provided with 'appropriate facilities' to fulfil their duties.²⁹ Rule 68 entitles prisoners to a visit once in every four weeks, with additional visits given as a 'privilege' by the Secretary of State.³⁰ In practice, prisoners often have more visits than the statutory entitlement. Rules 67 and 68, however, grant to prison authorities significant powers to interfere with communications, and restrictions can be placed on communications on grounds of safety, security and discipline.³¹ Letters, other than legal correspondence, may be intercepted and read by governors and visits may be suspended.³² Rule 68 allows the governor to defer a prisoner's right to visits whilst he or she is in cellular confinement.³³ Visitors are required to give their name and address and be searched with their consent. If consent is withheld, the visit will be refused. The visit will also be refused when the authorities suspect that the visitor is carrying an unauthorised article, for example, drugs.³⁴ Under the Prison Rules, visitors may lodge a complaint about their treatment with the prison authorities. If they are dissatisfied with the response, they can complain to the Prisoner Ombudsman who may conduct an independent investigation.³⁵

4.3 The arrest of a parent

The Police Service of Northern Ireland (PSNI) Code of Ethics (2008) requires officers to respect the human rights and dignity of individuals and to treat them without discrimination. Section 5.1 requires that arrest and detention be carried out 'in accordance with the provisions of the European Convention on Human Rights' and other relevant human rights principles. Police recruit and officer training includes elements dealing with children as victims, vulnerable witnesses, children and suspects and other children in contact with the law.

Police powers of arrest are provided within the Police and Criminal Evidence (Northern Ireland) Order 1989. Arrest may only take place where 'necessary' (PACE Article 26) and force is also only permitted where 'necessary' during arrest. The Order does not provide any formal status or rights for a child whose parent is arrested or who is present during an arrest. The police service has produced written guidance on police arrest procedures requiring officers making arrests to prepare a 'plan of search' identifying whether children are likely to be in the house. Whilst considerable effort goes into ensuring the safety of children in cases related to family violence and child and sexual abuse, in other cases involving suspected criminal conduct the family

²⁷ As above p. 29

²⁸ Prison and Young Offender Rules (Northern Ireland) 1995 Part VII 65 (1)

²⁹ Part VII 65(4)

³⁰ Part VII 68 (3)

³¹ Part VII 67(2)

³² Part VII 67(4 and 5)

³³ Part VII 68(6)

³⁴ Part VII 73 (1,2,3 and 5)

³⁵ Part VII 179

situation may not be known to the authorities, making it difficult to plan for children's needs. Where police have any concerns about a child's safety following the arrest of a parent, they have a duty to inform social services.

The police service has significant experience through its CARE unit of working alongside social services in with family violence and child and sexual abuse. In such cases, the authorities may be aware of the particular situation and have established whether children in the family are on the 'at risk register' register. The child may be a witness to violence or abuse, and assessment will be made regarding access to the arrested parent. Social services work alongside police in these cases. If there is no one available to care for the child except the arrested person, the child may be brought to the custody suite along with the arrestee.

Police guidance on "Children in the Company of Detained Persons Brought to Custody Suites" states that, where possible, arrangements for care should be made by the arrested person.³⁶ Only when 'all reasonable steps have been taken' and failed, should the child be brought to the custody suite with the detained person. Where a child is brought into detention with an adult, police contact social services as soon as possible to assess the child's needs. If it is considered safe and no appropriate alternative provision has been found, the child may remain with the detained person who will be responsible for their care (for example, feeding, changing nappies). The police service expects custody staff to use discretion in dealing with any requirements that the child may have in order to meet their needs. There are special custody cells for parents and children. Where the detention is for a longer period, the child may be removed by social services and placed in alternative care. The guidance notes, however, that the removal of a child engages Article 8 of the ECHR and therefore must be 'lawful, necessary and appropriate'.³⁷ Police and social services operate a "Joint Protocol" (2004) which establishes the responsibilities of each organisation. In 2009, the Criminal Justice Inspection (NI) reported that police custody staff 'showed a caring approach to those who had dependency obligations. Children whose parent was arrested were kept out of the custody suite and looked after by other staff until a relative or representative from social services arrived'.³⁸

There are potential tensions between the detained person's right to privacy and their family's rights to information. A detained person may not wish their arrest to be known, yet lack of information may lead to anxiety and stress for the family, including children. When a parent, or any other person, is arrested, they have the right to inform someone of their arrest.³⁹ When in custody, the detained person may make one telephone call and the custody form asks for the name of a person who can be contacted. Where the arrested person has child-care responsibilities and the child is not with them, the police service expects custody staff to ensure that they are able to meet their parental responsibility.

During fieldwork interviews, prisoners and their families discussed the stress of an arrest and difficulties in accessing information:

When I was arrested they [police] raided my house and they were not considerate at all. They didn't care that wains [children] was in their bed sleeping. They didn't stop

³⁶ Police Service of Northern Ireland undated Guidance on Children in the Company of Detained Persons Brought to Custody Suites'

³⁷ As above para. 5.2

³⁸ Criminal Justice Inspection Northern Ireland (CJINI) (2009b) *Police Custody: The detention of persons in police custody in Northern Ireland*. Belfast: CJINI para. 5.8

³⁹ Article 57 PACE and PACE Code C

searching the rooms and that. There was no concern about it at all when they raid your house as far as I can see... The girl [girlfriend] was saying to me, she was up today, she comes up regular – she was saying that the wains was scared that night and the police didn't consider them at all like. (Prisoner focus group, Maghaberry)

She [children's mother] knew I had been arrested but she never knew where I was or what was the case. So after two days I was allowed to phone her, so the wife and children hadn't seen me for two days or heard from me for two days. After that I was allowed to phone her and then that was it, she was able to come to the police station and see me. (Prisoner, Magilligan)

Mothers considered that witnessing the arrest of a parent could result in children having negative attitudes towards, or being scared of, police officers, as the following views illustrate:

I tried to explain it to them because my kids were still pretty young then; trying to explain if you're naughty the police can take you away when you're older, if you're going to do naughty things the police can take you away. It's trying to educate them ones too that, trying to explain that.

You have to have respect for people.

They probably hate the police for taking their daddy away but their daddy has did something wrong. So it's trying to get them to understand the really bad of the situation you know. (Focus group, Newry)

My number one priority, forget me, would be the younger ones in the family who have witnessed and watched what do you call it the handcuffing, the midnight arrests. (Mother, Ballymena)

Several family members discussed arrests by the police and immigration services taking place in the presence of young children, leaving children with strong images of their parent being taken away. One mother stated that her young child had said 'Daddy' had been 'taken away by bad men'. In another case, both mother and father were arrested in the presence of their 3-year-old child. The police came at night and the mother contacted a friend to take care of the child. Another mother noted that her children's memory was their father being arrested by the police in their house.

Mothers described the anxiety created by lack of information:

Interviewer asks whether information is given to the parent when the other parent is arrested.

No, I was waiting literally on solicitor's phone calls to let me know what was happening. I was with my wee one, he was in nursery and I was away on a day trip in nursery and I was greeted by my friends getting off the bus who told me that he had been arrested because they had seen the house being raided and all. They let me down into the cells to see him that night but then that was it. I had to wait on solicitor's phone calls to find out the rest. (Mother focus group, Newry)

One mother fainted when she received a phone call from her young son who had been arrested for murder and was 'crying and crying'. She phoned the police station but 'they didn't want to know'. The following days were the 'hardest three days' of her life, particularly having to explain to her younger children what had happened to their older brother. The case was high profile and she felt obliged to give her children the facts:

I told them the truth, because if I didn't tell them the truth, somebody outside certainly would have. I explained to the young ones that their brother was in jail for a crime: murder. I says that murder is a word that you'll hear.

She worried about the stigma and her family's safety and asked herself 'who's going to know? Will I be burned out [of her home]?'

The stigma of murder is severe, as severe as it can come. You go into automatic mode, trying to answer questions while asking questions at the same time.

She explained the situation to the children's teachers and considered removing them from school, but the teachers were supportive. The anxiety of being involved in a high profile case was severe: 'I was afeared [afraid] for my life and afeared for my kids'. The stress of the case made her question her parenting skills: 'Your job is to protect them and bring them up to the best of your ability. What do you do when you hear people shouting "Murderer!", "Scumbag"?' She contacted the prison but 'didn't get a wild [a great] amount of information'. You were lost but 'they just assumed you knew what to do'. (Focus group, Limavady)

An NGO worker considered that the police should improve communication with families and children during the arrest process:

I remember going out to see a girl one time and she had seven children and the police came out and arrested her husband at half-five, teatime, with all her kids in the house. All the police cars in the driveway, came out, took him and away they went and she hadn't a clue where he was going, where he was away to. There was hardly any communication. The children were stood out the front in their sock soles while they [the police] searched the house, no support whatsoever. She hadn't a clue where he was ... and that really affected that whole family.

In this worker's experience: 'sometimes it would be a whole night and half a day before they'd [families] even get a call from a solicitor to say you know he's in Antrim or he's here or he's been arrested, and some of them [families] wouldn't know for days'.

The Northern Ireland Prison Service Family Strategy (2010) identifies the need to 'mitigate the effect on children if they are in attendance when an arrest is made' and proposes that awareness be raised on this issue. Responsibility for taking action on this rests with the police service (PSNI), social services and Barnardos (an NGO).⁴⁰

As stated above, Northern Ireland is in a period of transition from conflict and difficult relationships remain between some groups and communities and the police service. Allegations persist, particularly from within Republican communities, of police harassment when searching homes or making arrests.

Particular issues also arise in the case of people detained for immigration reasons. The Northern Ireland Human Rights Commission has published research and made recommendations about immigration detention.⁴¹ The report discusses human rights concerns regarding family removals, usually related to failed asylum cases. Families are not given prior information about removals for fear that they will abscond. Consequently, the 'lack of information and preparation means that the family needs to pack their belongings on the day of removal, often early in the morning'.⁴² In interviews

⁴⁰ Northern Ireland Prison Service (NIPS) (2010) *Family Strategy 2009-2014* Belfast: NIPS p.12

⁴¹ Latif, N. and Martynowicz, A. (2009) *Our Hidden Borders: The UK Border Agency's Powers of Detention* Belfast: NIHRC

⁴² As above p. 59

with the Commission researchers, immigration officers admitted that the process of removing a family can be stressful for all involved.

It is heartbreaking; young children, in particular, they have to pack their toys, etcetera. They often think they are going on a visit; it is often more heartbreaking for us than for them. With the parents it is a lot different; it hits them that we are taking them away.

There was one time this boy was upset and wanted a shirt ironed. I ironed his shirt and got his case and it helped.

I found it hard. There was a little child just clinging to me. I found it hard.

Human rights researchers were informed by detainees, however, that immigration officers were not sympathetic to children's needs. In one case, they had entered children's bedrooms and told the children to get out of their beds. The mother was reportedly told to stop crying and to 'control herself', and then asked to tell the children to 'do as they were told'. The family was reportedly not allowed to use the bathroom with the door closed and not allowed to gather belongings.⁴³ The Commission cited the case of a mother with three small children who were removed with approximately 10 immigration officers present, a situation which the Commission found 'disproportionate and not justified'.⁴⁴ As there is no immigration detention removal centre in Northern Ireland, families were transported by boat and bus to immigration centres in England. Consequently, 'the family has to endure the experience of being transported twice, and face a stay – even if short-term – in an immigration removal centre'.⁴⁵

4.4 The pre-trial imprisonment of a father/mother/carer

The Public Prosecution Service (PPS), independent of police and government, takes the decision about whether a person is prosecuted or not, based on the 'evidential test' and 'public interest test'. Once a person is charged, they must be brought before the court to decide whether they will be granted bail or held in custody. The prosecution service advises the court on whether a person should be remanded in custody and will recommend remand where it considers there is a risk of absconding, interfering with witnesses, perverting the course of justice, or committing further offences. Bail conditions can be placed on a defendant. Conditions include reporting regularly to police or staying away from a particular place. People placed on remand may appeal if there is a change in their circumstances. They can apply for compassionate bail in cases of family bereavement.

In December 2010, the total Northern Ireland prison population was just over 1,500, of which 36 per cent was pre-trial remand.⁴⁶ The high proportion of remand prisoners and length of time spent in remand has been criticised by the Prisons and Criminal Justice inspectorates. In 2010, the Criminal Justice Inspection for Northern Ireland (CJINI) published a report on 'avoidable delay' in the criminal justice system and made a series of recommendations aimed at speeding up the process.⁴⁷

⁴³ As above

⁴⁴ As above p. 60

⁴⁵ As above pp. 60-61

⁴⁶ Kings College London (2010) *World Prison Briefings*. Available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=170. Last accessed 28 February 2011

⁴⁷ Criminal Justice Inspection Northern Ireland (CJINI) (2010) *Avoidable Delay* Belfast: CJINI

Remand prisoners may receive two one-hour visits a week (in Magilligan, visits may be longer than this) and these may be combined into one two-hour visit. There may also be an additional committal visit in the first week of remand, depending on availability.

For prisoners and their families, time on remand is often particularly difficult, practically, financially and emotionally, with its inherent uncertainty.

See the year when you're on remand. Absolutely nothing [in terms of support]. I don't know if there is facilities out there for that and we never really looked into it but, look, anything we sort of done, we done sort of on our own. (Prisoner, Magilligan)

He was remanded every month. I had to go to a bail hearing every month. ... It was hard. At the start NIACRO was fantastic. There used to be a lady would come and mind the kids from half seven (in the morning) til I would come back. She would take them to school and lifted them from school and took them. But then resources cut the funding so that hit the families quite hard. (Mother focus group)

This mother described support provided by NIACRO as a 'lifeline' knowing that the children were safe while she visited her son in jail. This provided an opportunity for them to discuss the case whereas, when the children participated in the visit, they avoided discussion.

The Northern Ireland Prison Service Family Strategy (2010) notes that information leaflets in a range of formats and languages are distributed at courts for families, with useful contact numbers for services available, including Family Links (a NIACRO service for prisoners' families).

4.5 Sentencing and imprisonment of a father/mother/carer

In February 2010, the Hillsborough Agreement recognised the significance of public confidence in sentencing. It included a commitment that the newly appointed Minister for Justice would consider the establishment of a Sentencing Guidelines Council. In July 2010, a judicial report by the Lord Chief Justice made recommendations for the development of sentencing guidelines based on the principles of consistency and fairness, aimed at enhancing public confidence.

Judges sentencing in the courts within all United Kingdom jurisdictions take account of a variety of complex factors as well as legal requirements.

The sentence for an individual offender in court is set by the judge hearing the case. The judge will take into account the law, guidelines, expert reports, and all the circumstances, to decide what will be the correct sentence for this offender, who committed this offence against this victim, in this situation.⁴⁸

Precedent is important within the legal system, and judges refer to previous cases for guidance on sentencing.

When sentencing, judges have access to a pre-sentence report provided to the court by the Probation Board for Northern Ireland which may include information on offenders' personal and family circumstances. The legislative basis for the Pre-Sentence Report is Article 21 of the Criminal Justice (NI) Order 1996, which also allows the court to decide that a pre-sentence report is not necessary providing reasons are

⁴⁸ Consultation letter signed by Joanne McDermott, Lord Chief Justice's Office, Royal Courts of Justice, Belfast 4 October 2010. Available http://www.courtsni.gov.uk/NR/rdonlyres/D1CD1101-A844-4E98-B694-3A10B14E87BD/0/p_pc_ConsultationletterPriorityListAreasforSentenceGuide.pdf

given for this. The pre-sentence report includes a risk assessment and recommendation on whether a community sentence is considered appropriate for the offender. Probation officers in Northern Ireland are social work qualified. The following is an example from a published judgment which demonstrates how information on the family circumstances of the defendant may be considered in court:

*The applicant's youngest son is autistic and suffers from severe learning difficulties. He is now four years old and it has been suggested [by the psychologist] that he is at a crucial stage of his development and in critical need of the support and care of both parents. Since the applicant has been committed to prison, this child has been cared for (albeit with difficulty) by his father.*⁴⁹

Recent case examples suggest that judges are beginning to consider the impact of custodial sentencing on children in some, albeit exceptional, cases, resulting in a reduced tariff for the parent.

In the case of *R v Cassidy* (2009),⁵⁰ Kerri Cassidy pleaded guilty to the manslaughter of Gary Elliott. Giving evidence to the court, Dr Helen Harbinson, consultant psychiatrist, stated that 'a custodial sentence will separate [the defendant's two children] from their mother and will inevitably affect them adversely. It will also pose problems for her especially in relation to her bonding with her baby'.⁵¹ Justice Hart acknowledged the impact on her children but considered that, due to the loss of life, a custodial sentence must be imposed, in this case, three years imprisonment followed by two years under probation supervision.

The circumstances of a defendant's children were also considered in the case of *Roisin Doyle*, who pleaded guilty to the manslaughter of her former husband, Kevin Doyle, father of her four children.⁵² The Judge's ruling noted that:

*Ms McDermott [counsel for the defendant] contended that because of the exceptional personal circumstances of the defendant - including the fact that there are four young children, one of whom is autistic, and all of whom are likely to be adversely affected by the imprisonment of their mother, a non-custodial sentence would be appropriate. The reports furnished to the court in relation to the boys emphasised that separation from their mother by her imprisonment would compound the distress the boys suffer from having already lost their father. There is no doubt that these are compelling circumstances especially when set against the overall context.*⁵³

In deciding on an appropriate sentence, Justice Treacy took into consideration the *Cassidy* judgment, cited above, and the impact on the children, one of whom was autistic. He concluded, however, that a custodial sentence was necessary and sentenced *Roisin Doyle* to three years' imprisonment followed by two years on probation supervision.

In May 2010, at Belfast Crown Court, Justice Loughran sentenced a woman, who stabbed her ex-partner seven times with a kitchen knife, to one year's imprisonment but ordered that she serve just four months of the sentence in prison and the rest on licence in the community because of the potential impact on her children.⁵⁴

⁴⁹ In Her Majesty's Court of Appeal in Northern Ireland, *The Queen vs Ita Ann Doyle* Ref KerF286811/06/99.

⁵⁰ *R v Cassidy* [2009] Neutral citation number NICC 57.

⁵¹ As above para. 23

⁵² *R v Doyle* [2010] Neutral citation number NICC 26

⁵³ As above para. 25

⁵⁴ Belfast Telegraph 5 May 2010

In the case of *R v Meehan and Others* [2009], Justice McCloskey sentenced a mother to five years' imprisonment for murder as a secondary party.⁵⁵ In deciding an appropriate sentence, the judge took into consideration the ruling in *The Queen v Attuh-Benson* [2005]. This case concerned drug trafficking involving a woman, a Ghanaian national, who had given birth in prison and been separated from the baby, and who also had children living at home in Ghana.⁵⁶ In reducing her prison sentence from 10 to eight years, the court stated that:

*...given this appellant's particular difficulties which we do not need to rehearse in any greater detail, and given the way in which she has behaved within the prison system and her medical condition, we are satisfied that, as an act of mercy, some modest reduction in the sentence passed upon her is possible.*⁵⁷

Justice McCloskey also referred to the case of *McDonald and others* (2006),⁵⁸ in which, although 'the invocation of personal family circumstances was unsuccessful'

*... the Court of Appeal was disposed to accept, in principle, that a sufficiently severe impact on family members occasioned by the imprisonment of the offender could, exceptionally, justify the imposition of a custodial term shorter than that which would otherwise be appropriate.*⁵⁹

On the basis of these judgments, Justice McCloskey concluded that a degree of mercy was appropriate:

*I acknowledge that the court should give effect to these principles only in exceptional circumstances. In some respects, it is difficult to imagine a more unique case. The younger Meehan children must be viewed by this court in a humane and compassionate manner. Almost incredibly, they have abruptly been deprived of both parents and the association of their older brother. They will now be reared by other adults. Their upbringing will take place in an unnatural environment. I consider that I must also take into account the pain, anguish and shame which this will inevitably inflict on their mother, this Defendant. On balance, the seasoning of justice with mercy seems to me appropriate in these highly unusual circumstances.*⁶⁰

The children's father, however, was sentenced to 14 years imprisonment and their brother to nine years.

Alongside this evidence of a slowly developing jurisprudence which takes account of children's needs, although only in exceptional circumstances, cases persist of parents, including mothers, being imprisoned for minor, non-violent offences. In February 2011, a young mother of a 3-year-old daughter, who had no previous convictions, was sentenced to three months' imprisonment in Hydebank Wood for theft of a pair of jeans worth £10. After two days in prison, the mother was bailed pending appeal.⁶¹

To ensure greater compliance with human rights standards, including the new European Prison Rules, the Northern Ireland Human Rights Commission has

⁵⁵ *R v Meehan & Ors* [2009] Neutral citation number NICC 59

⁵⁶ *R v Attuh-Benson* [2005] 2 Cr. App. R(s) 11, a

⁵⁷ Cited in *R v Meehan and others* as above para. 22

⁵⁸ Attorney General's Reference No. 1 of 2006 [*McDonald and Others*] [2006] NICA 4, paragraphs [36] – [41]

⁵⁹ Cited in *R v Meehan and others* as above para. 23

⁶⁰ *R v Meehan and others* as above para. 49

⁶¹ See for example *Belfast Telegraph* Saturday 5 February 2011. 'After two nights in jail cell for jeans theft, young mum bailed. Story by Sarah Rainey. Available for download at <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/after-two-nights-in-jail-cell-for-jeans-theft-young-mum-bailed-15074586.html>. Last accessed 25th February 2011

recommended that women should only be detained in custody as ‘a measure of last resort and only in serious cases’.⁶² The development of a Women’s Strategy⁶³ and the opening of the Inspire Centre, a support centre run by the Probation Board for women who offend, are progressive examples of the attempt by criminal justice agencies to reduce the numbers of women in custody.

4.6 Prison service policies

Policies relevant to family contact and imprisonment include the Northern Ireland Prison Service (NIPS) Family Strategy (2009-2014), the Safeguarding Children: Framework and Guidance (2010), the Northern Ireland Prison Service Resettlement Strategy (2004), Women’s Strategy (2010-2013) and the Mother and Baby Policy (2006).

An interagency group involves the prison service with other statutory and non-governmental organisations working with prisoners’ families. The group holds an annual and networking day to exchange experiences and share ideas for good practice. The prison service Family Strategy 2010 states: ‘there have been some very positive developments in this area in recent years and provision for children and families of prisoners is already well established across Northern Ireland from a range of sources and providers’. The Strategy aims to ensure ‘the provision of timely and accurate information’; ‘advice and support to families, including financial assistance with visits’; ‘family visits arrangements’; and ‘family programmes and services’. It recognises that ‘families have a vital role to play in helping prisoners to achieve successful rehabilitation and reduce re-offending’.⁶⁴ The prison service acknowledges the importance of children’s contact with imprisoned parents:

*Visiting a parent in prison is an important factor in maintaining a bond and influencing hopes and aspirations for the family being either intact, or continuing meaningful contact, after release. It is recognised that providing good amenities and opportunities for parent and child contact helps to counteract feelings of anxiety, guilt and stigma. The benefits of positive contact are long-lasting in the prevention of emotional problems, social exclusion and contribute towards effective resettlement and a reduction in offending.*⁶⁵

The Family Strategy includes examples of initiatives undertaken by the prison service (discussed below), including provision of Family Support Officers in each establishment; child-centred Visits; and facilities for prisoners to record the reading of a book for their child to listen to at home. The Strategy notes that a prisoner may make a telephone call home within 24 hours of reception, and, if any urgent childcare needs are identified, relevant agencies should be notified. Prisoners should be supplied with a Family Links information pack (produced by NIACRO) and given support from Family Links with 24 hours of committal.

In an exercise required by Section 75 of the Northern Ireland Act, the Family Strategy was ‘screened out’, meaning that a full equality assessment was considered unnecessary. This was difficult to understand but also unfortunate as this would have provided the opportunity to consider whether aspects of the policy impacted differently,

⁶² Northern Ireland Human Rights Commission (NIHRC) (2009) *Response to NIPS Draft Family Strategy* Belfast: NIHRC

⁶³ Department of Justice (with Northern Ireland Prison Service and Probation Board for Northern Ireland) (2010) *Women’s Offending Behaviour in Northern Ireland: A Strategy to manage women offenders and those vulnerable to offending behaviour 2010-2013* Belfast: DOJ

⁶⁴ Northern Ireland Prison Service (NIPS) (2010) *Family Strategy* p. 4

⁶⁵ As above para. 4.9

and perhaps negatively, on different age groups (for example, younger children or teenagers) and to consider issues regarding gender, 'race' and ethnicity, disability and dependency, as these impact prisoners' families.

The prison service's "Offender Management: Interim Offender Management Practice Manual" (November 2009) states that prison staff may make contact with family members only when permission is granted by the prisoner, as required by data protection legislation.⁶⁶ Further, the prisoner must be advised that this consent will be the 'forerunner' for 'Home Circumstances Reports, Home Visits for supervision on licence, the background to Compassionate Temporary Release, Home Leave eligibility'.⁶⁷ Each prison has at least one family support officer whose role is to support families and provide information, and liaise between families and other agencies. The Probation Board conducts a Home Circumstances Report for prisoners applying for any form of temporary release. Professionals and non-governmental organisation workers reported that since they can no longer make contact with families without prisoners' permission, numbers of referrals have been reduced. This leaves some families without adequate support, especially in the early days of their relative's imprisonment.

The Safeguarding Children Framework and Guidance addresses three strands: children visiting prisons; managing visits in cases where the prisoner may pose a risk to children; and child prisoners in Hydebank Wood. In April 2010, the Northern Ireland Prison Service introduced a new child protection policy: "Safeguarding Children: Policy and Practice" and a child protection co-ordinator role was assigned to a member of staff within each prison. The co-ordinator's role was combined with the existing roles and duties of staff, which may dilute their role in relation to child protection.

The new policy requires that all children visiting prisons are identified and registered. Restrictions are placed on prisoners who are considered a potential risk to children. In these circumstances, agencies, including police, probation and social services will be asked for advice on what type of contact, if any, would be appropriate. The collection of data on children raises issues of data protection and privacy. The requirement for identification and registration also engages children's family rights (Article 8 of the ECHR) as some families may find it difficult to produce identification, such as birth certificates; however, the prison service has indicated that this aspect of the policy has not been implemented.⁶⁸ Children aged 16 and 17 may make an application to visit a prisoner without being accompanied by an adult and this request may be granted if it is in the child's best interests. These children are required to produce a passport-sized photograph and biometric handprint. An unaccompanied child visiting for the first time will be met by a Family Officer who will explain the visits procedure. It is recognised within the policy that although contact between parent and child is often beneficial this is not universal. Where there are concerns about a child's welfare, the issue of contact will be referred to social services for assessment. Prison staff and professionals reported that they had not experienced resistance or anxiety from parents about the new procedures. Whilst some parents accepted the arrangements, others were unhappy about allowing their children to be photographed by the prison service.

⁶⁶ Northern Ireland Prison Service (2010) *Offender Management: Interim Offender Management Practice Manual Belfast: NIPS* p. 25

⁶⁷ As above

⁶⁸ Correspondence from the Northern Ireland Prison Service 13 April 2011

4.7 Problems for families in the community

4.7.1 Financial problems

The United Nations Convention on the Rights of the Child (CRC), under Article 27, requires that children have a standard of living adequate for their 'physical, mental, spiritual, moral and social development'. Financial problems are created for families when a parent goes into prison. If welfare benefits are in that parent's name, they will be stopped once they are imprisoned. Whilst benefits are re-established, and there is often considerable delay, carers must rely on family and friends. Further costs include financial support for the prisoner, such as money for prime rate telephone calls and toiletries and clothes. Visiting is often expensive especially for families who have to travel long distances on public transport. Some financial support is available towards the cost of visits for lower-income families, through the Northern Ireland Prison Visits Scheme. The Scheme is part funded by the prison service and includes financial support from the state for visiting close relatives in prisons throughout the United Kingdom. Financial help may be given for up to 26 visits a year under the scheme. Whilst the scheme is progressive, some families reported that the bureaucracy involved in claiming assistance sometimes outweighs the benefits. Others stated that, particularly where the prisoner was in another UK jurisdiction, the assistance did not meet the full cost of travel and subsistence thus failing to ameliorate financial hardship. Where the prisoner is detained outside of the UK, visiting is particularly expensive. NIACRO recommends that, in cases where children are living with a parent estranged from the prisoner, the child 'should be entitled to assistance in their own right'.⁶⁹

In interviews, family members noted the expense involved in supporting prisoners. Families will usually buy clothes for prisoners and there are strict guidelines about what is permitted. Guidelines recommend a maximum value for clothing and the prison service may make clothing available 'to avoid families incurring unnecessary costs'.⁷⁰ However, families generally prefer personally to select clothing for their relative, and young people in the Young Offenders' Centre are under considerable peer pressure to wear the latest fashion in clothes and footwear. The cost of telephone calls from prison and buying toiletries and food from the prison shop is expensive. Prisoners can earn a limited wage towards costs, but families are the primary source of financial support. A mother commented how a mentor working with her young daughter had given the child 'trainers' [sports shoes]. The mother asked why and the mentor replied that the child had a hole in her shoe but did not want to ask her family for a new pair, knowing their difficult financial situation. Through the Family Links service in the visitors' centres and in the prisons, NIACRO staff provide advice on transport, finance, benefit entitlement, debt, prison visits and other issues. Prisoners' families find this support invaluable:

NIACRO's a good system, it's a good help, you know they're very good at explaining even your benefits and all; they're very good with that.

It was [NIACRO worker] showed me everything. I got a wee pack. Somebody spoke to him [the prisoner] in jail and he was able to tell them my partner and children are at home and I got this big information pack. (Newry focus group)

Other NGOs provide direct support through hardship funding. For example, the Prison Fellowship distributes hampers and gifts at Christmas for prisoners' families living in poverty. One mother described the support offered by the Prison Fellowship as 'life saving'.

⁶⁹ NIACRO response to Draft NIPS Family Strategy

⁷⁰ Correspondence from the Northern Ireland Prison Service 13 April 2011

4.7.2 Stigma and shame

Alongside the material strains of imprisonment, prisoners' families also experience stigma and abuse within local communities. Northern Ireland is a small society and often the victim of a crime lives in the same locality as the alleged offender and their family. Media coverage brings unwanted publicity to prisoners' families. Some families experienced verbal and physical violence:

There was an incident at the school with the family of the people that was involved with us. So she [children's mother] had to take them out of school and then she had to eventually move... and then they re-schooled them... I think they settled in really, really quickly. (Prisoner, Magilligan)

Children experienced bullying in school and, while some teachers were sympathetic, others labelled the child, expecting them to be badly behaved because they had an imprisoned parent or sibling.

He [brother] was being tortured at school as well. You know, teachers harassing him I think because, like big brother, like little brother and that's the attitude ... I think the school did not help the situation at all. The teachers did not help at all and [my son] has kind of left school ... (Mother, Ballymena)

Families described how children were forced to move home or had to change schools because of verbal and physical abuse from other children and adults. One mother stated that her family prepared for retaliation against them because 'my son had a tremendous impact on someone else's life'.

Mothers in one focus group discussed reactions from school and the community:

Interviewer – Has the school been supportive?

The primary school has. The grammar school – I haven't really said too much to them because it's nothing to do with them. So the less they know, it's better for (X). They don't know but the primary school teacher – he's from where we live and he's been great; there's been no bullying and stuff; it's just adults; adults are, you know yourself what adults are like, sometimes you'd just like to give them a slap, like it's their attitude in front of the children.

It's some of the things that kids come off with, you know. It's adults saying it. ... My wee one comes in to tell me things, there's no way a child would say that. It's hearing other adults.

Interviewer – How do kids cope with that if people are saying things?

I think it depends on the child. My oldest is very feisty, so she is, she tries to be really brave but she's a real big softie on the inside so she would sort of throw her back up ... I don't care but when she's in the house she's a whole different child; she would cry and things like that there but it depends on the child I think. I really do think it depends on the child, how they cope, so I do.

In focus group discussions, children were asked whether friends were aware of their experiences of prison visiting. This raised the issue of privacy in local communities:

Interviewer – When your dad was in prison, did you talk to your friends about that?

Ah...[thinking] no.

No. My friends would've known about it. My town may be small, but it's got a big mouth.

In another exchange:

Interviewer – Is there anybody you wouldn't want to find out that you had a family member in prison?

Not bothered if people find out... [Interviewer – If people said something?], I'd just headbutt them... Anybody that talks about you, you just headbutt them.

There is particular stigma for families whose relative is charged or convicted with a sex offence. During observations of a visit in Magilligan, family members voiced concerns that sex offenders shared the same visits area as other prisoners. Mothers disclosed discomfort about bringing children to a place where sex offenders were present. Rumours abounded about who was, or was not, a sex offender, and women stated that their partners in prison alerted them to information. A professional worker noted how some visitors had reacted abusively to a high profile sex offender during his family visit. However, in time, the reaction became less severe. The families of sex offenders endure a double stigma – being related to a prisoner and to a sex offender. An NGO worker explained:

The issue affects many prisoner families but especially sex offenders' families. Those folk withdraw, which creates a host of other issues. They experience fear of the offender, fear of the community, fear of trying to step out to start a life. We know the cruelty of the school playground.

When a child has been abused by the prisoner, the betrayal of trust often leads the family to 'disintegrate'.

4.7.3 Emotions and coping

Some families said that children had coped well and shown resilience in the face of their parent's imprisonment but others showed signs of very negative effects:

I won't say severe problems – but they had problems. [Child's] schooling dropped severely. His behaviour changed pretty drastically. He was aggressive and loud and boisterous and things like that. OK, yeah so you expect from a normal child, but there was a sort of anger in this. (Prisoner, Magilligan).

With help from psychologists, this child's emotional situation improved and school staff had been 'brilliant, absolutely brilliant!'

4.8 Providing children with information

The decision concerning what information should be given to a child about a parent's imprisonment is difficult and raises complex, personal considerations. Children have a right under Article 12 of the CRC to participate in decisions affecting their lives and this requires access to adequate information to enable effective participation. This must be considered in the context of Article 3 of the CRC, prioritising the best interests of the child. Some families were concerned about the consequences of fully informing children, fearing they may not be able to cope or would lose respect or love for the imprisoned parent. The decision of providing a full account involved many factors, including the child's age and emotional capacity, and whether the parent was remanded or convicted.

I fell apart so I did. I thought, you know, they'd hate me for not telling them so I told them, I thought honesty is probably the best policy so I told them; I didn't go in to the detail and all but I told them he'd been naughty and he'd been taken to jail for a while. I wanted to explain too that if they're going to be naughty when they're older that's what will happen, so sort of telling them ones but trying to get them to understand if you are bad this is what can happen, you know you can get put into jail sort of thing. (Mother, Newry focus group)

She (name of mother) told him that I was in a fight and daddy ended up in jail – that's what he sort of thinks ... he knows it's a jail and it's even ... seeing Maghaberry there in the news and all, she said, 'there's daddy's house'. (Prisoner, Magilligan)

You hear prisoners saying to their children, 'I'm at work', the children being at their granny's house or their aunt's house, also the cousin's – they hear the adults talking, you know, so I was aware that, you know that they may pick up on wee things. So what I done was I told them I was in prison, although I told them I was in for driving offences, I says 'Daddy doesn't have his licence'. Obviously when they get older and I'll maybe have to sit down and tell them. (Prisoner, Magilligan)

We brought them up to a visit... I was only in three or four weeks at that time and I sort of says, 'Let's just set them down at the table on visits', and just sort of explained, not any details of the case. Because we thought at that stage it would have been a wee bit upsetting to go into the details – although we did later... And the more information they got, they definitely were able to cope with it. (Prisoner, Magilligan).

Through individual support and within parenting programmes, the NGO, Barnardos supports parents (in prison and in the community) in considering what information to give to children, and how. Barnardos has also produced a range of accessible information leaflets and a DVD, providing guidance for parents and professionals on the emotional and practical impact of imprisonment.

Some families believed it important to inform children fully from the outset and those who decided to inform children considered that they coped well. Other parents, who were concerned to protect their children from the harsh reality, either presented a restricted version of the truth or gave no account. Children are told, for example, that their father works in the prison or that their mother is in hospital. Often, older children are involved in the family secret and become co-conspirators.

For some families, there is no choice about whether to inform children about a parent's or sibling's (alleged) offending and imprisonment, as information about this is published in the local media. Children are confronted by other children in school who have information about their parent's or sibling's crimes.

My ex [girlfriend] showed her the newspaper cutting and says 'there's your da [father] on that'. Just let her read it. So that's how she found out. (Prisoner focus group, Maghaberry)

My older son, my 14-year-old, he was able to Google me, you know, he was able to read the news reports and things. So he knows quite ... he knows everything, more than I hoped he did know, you know... He sort of set me down and kind of talking about it and he was, seemed to be a bit annoyed that I hadn't brought this ... and my reason for not speaking about it was that, it would be very difficult to talk about – not very difficult – but I didn't want to tell him about the crimes and him thinking I was glorifying it or condoning it in any way. (Prisoner, Magilligan)

The situation has been particularly dire for the children of life-sentenced women prisoners who have been demonised in the local tabloids with lurid and often inaccurate stories.

4.9 Contact between prisoners and their children

Children have a right to family life (Article 8 of the ECHR) and to necessary support to maintain contact with the parent from whom they are separated, (Article 9 of the CRC) in accordance with the child's 'best interests' (Article 3 of the CRC). The main forms of contact between prisoners and children are letters and cards, telephone calls and visits. Maghaberry and Hydebank Wood have recently piloted a scheme whereby children may email messages in for their parent to read; however, for security reasons parents may not email return messages but must find alternative ways to respond. New technologies provide valuable resources for easier and more frequent communication and, while acknowledging that security and safety issues need to be considered in developing these, could be further utilised in maintaining children's contact with imprisoned family members.

4.9.1 Telephone calls

Prisoners regularly telephone their families but calls from the prison are expensive, especially for prisoners whose family is in another country.

It's extortionate so it is. Well, I'm standard [on the 'earned privileges' regime⁷¹] at the minute, so, enhanced I go back to £30 [the amount he is allowed to put onto his phone card] a week, but it's £20 a week I put in but it's crazy. ... I would phone probably for a fifteen minute period each day – seven days a week but the bill works out at a thousand forty pound a year – you know, you're putting that twenty pound a week – there's absolutely no way a residential line should cost that but ... BT [British Telecom] have a monopoly on it, you know there's no other providers in the prison system. (Prisoner, Magilligan)

Foreign national prisoners and other prisoners, who have not received visits and who do not have the financial means to make telephone calls, may be considered for a free, weekly, ten-minute phone call. However, a prisoner from the Republic of Ireland found calls excessively expensive especially when made to mobile phones, and stated that he received no financial assistance with these.

There is no facility for prisoners to receive telephone calls from families, a situation criticised by the prison and criminal justice inspectorates, which have recommended that children should be able to telephone into the prison to speak to parents and that incoming telephone calls should also be permitted to engage with children's daily lives and arrangements.⁷² Privacy is an issue, given that telephones are situated on prison landings in full view and hearing of others. Calls are regularly monitored by prison staff. In Magilligan, prisoners on the punishment regime in the Special Supervision Unit may have the 'privilege' of telephone access removed through the 'earned privileges' process. The inspectorate has criticised this practice as 'unreasonable'.⁷³

Although telephone calls are important in maintaining contact, pressure can be experienced by children and families to be at home when the prisoner calls. One

⁷¹ The Progressive Regimes and Earned Privileges Regime

⁷² HM Chief Inspector of Prisons and Criminal Justice Inspection Northern Ireland (HMCIP/CJINI) (2010) *Report of an announced inspection of Magilligan Prison 29 March – 2 April 2010*. Belfast: CJINI. para.10.129

⁷³ As above para. 7.22

woman said that she was sometimes unable to take calls as she was working. Yet she received messages from her partner saying that while she was getting on with her life, he was going to take his own life. The woman reported difficulties when, subsequently, she requested that staff ensured that her husband was well. Others were concerned that sometimes the phone was not answered when they called the prison. A free Family Care Line is available 24 hours a day, but this was not mentioned by families and it is unclear whether most are aware of it.

The inspectorates recommended that prisoners who did not receive visits from their children should be allowed to exchange visits for telephone credit to maintain contact. They also recommended that in order to alleviate the financial burden of expensive outgoing telephone calls, prisoners should be able to receive incoming calls from their children. Both recommendations were rejected by the prison service on the grounds that exchanging visits for telephone credit would prove difficult to resource and incoming calls from prisoners' children would be difficult to monitor, thus raising child protection concerns.⁷⁴

4.9.2 Visits

For most prisoners with children, but not all, prison visits are the most significant form of contact. Sentenced prisoners are entitled to a one-hour visit each week. Prisoners classified 'enhanced' within the disciplinary regime are entitled to one additional visit every four weeks. Three adults and three children are permitted at each visit, although governors have discretion to admit more children. We observed one situation where a child was refused entry to a prison under this rule.⁷⁵

Distance and travelling difficulties are considerable barriers to children being able to visit their parents in prison frequently and regularly. This is particularly evident at Magilligan which is in an isolated location and difficult to access. Maghaberry is also in a semi-rural location not easily accessible for visitors. NIACRO provides minibus transport to the prisons for which it receives state funding, including prison service funding. The NIACRO service was appreciated by families, but many families were concerned about the length of time and costs regarding travelling, especially for smaller children:

Well I'm from Derry and the NIACRO bus only comes up three days a week. They can't make it up for a half-ten visit, because a couple of times they're late. I don't think there's enough transport from Derry into Maghaberry Prison here. You have to be here for half-eleven, sometimes the bus is late so that cuts your visit short. The bus leaves Derry to be here for half-eleven but sometimes it doesn't make it. Then sometimes your visitors can be turned away because they're too late. It's getting to them. The kids be knackered [very tired] on the bus and whatever else. I think there should be more transport from different places in the country to get them here on time. (Prisoner, Maghaberry focus group)

Visits usually take place in large, communal visiting rooms. Families, including children, are admitted to the prison through an intensive and intrusive security procedure. They have to produce identification and a biometric handprint, are subjected to an airport style 'rub down' search, their bags and other personal possessions screened. They stand still for a 'passive drugs dog test. If the dog 'sits' by a person, they are offered a

⁷⁴ Northern Ireland Prison Service (NIPS) (2010) *Action Plan in response to CJINI HMCIP Inspection Report on Magilligan Prison*

⁷⁵ In correspondence to the research team (13 April 2011) NIPS stated that this issue has now been addressed

'closed visit'. Closed visits take place in a small room, the prisoner and visitors separated by a glass screen. There is no personal contact. The inspectorates had recommended that closed visits should be required, or visits refused only when a 'significant risk' could be justified by security intelligence in addition to an indication by the passive drugs dog test. The prison service refused to accept the recommendation on the grounds that in the 'operation and security' of the prison and when there was a 'threat to safety and well-being of all prisoners', decisions would be taken by the governor or authorised delegate at any specific time.⁷⁶

Some prisoners expressed anxiety about their families and children being subjected to the security routine. One prisoner did not let his small child visit because of this:

It's taking them through all that searching as well. You know, children coming in, they have to get the dog sniffed at them and my wee girl's two and she come up today, she was even searched at 2 years of age, you know, patted down. And that's why I don't believe in my 6-year-old coming up. Because he's going to get patted down, and if you're trying to hide it. Well not really hide it but trying to smoke-screen it that you're in prison so it's not affecting them in later life. The shame – my daddy was in prison. (Prisoner focus group, Maghaberry)

Another prisoner commented that:

Every visitor feels they're being treated as drug smugglers. (Prisoner focus group, Maghaberry)

In the main visits room, prisoners must remain seated on fixed chairs colour-coded for prisoners and visitors. Each visits room has a play area for young children, supervised by NIACRO or Quaker Service staff:

The women from NIACRO ... they're brilliant too, even with the kids; they sit and draw with them. (Prisoner, Magilligan)

Families and professionals considered that while the crèche provides much needed and enjoyed entertainment for children, allowing adults to talk privately, the rule that prisoners may not move from their seat means that if the child is enjoying him-or herself in the play area and wishes to remain there, the parent prisoner may see little of their child during the visit.

Visits were an experience looked forward to and valued by prisoners and families alike, but they could be emotionally upsetting, especially in the early stages of imprisonment:

The first visit was bad because they [the children] both started crying and clinging to me and didn't want to leave either. I was gutted because they both started crying and didn't want to leave. The second one [visit] was bad and the third one's better. (Prisoner, Maghaberry)

During observations of child-centred visits, the researchers observed not only the joy which parents and children experienced in each other's company, but also the children's tears on leaving, some having to be physically prised from the fathers to whom they clung.

Families consistently reported that the experience of visiting depends on the attitudes of individual prison officers on duty at the time of the visit. Whether or not prison staff are courteous can affect the atmosphere on a visit. Security incidents create unease

⁷⁶ Chief Inspector of Prisons and Criminal Justice Inspection Northern Ireland (HMCIP/CJINI) (2010) as above

and anxiety; for example, if prison officers suspect that a visitor has passed something to a prisoner, prison officers dressed in riot clothes may enter the visiting area to take away the prisoner. Such situations are difficult to explain to young children, especially those who do not know that it is a prison they are visiting.

Whilst some officers are supportive and friendly, others treat families 'like dirt', and as if they were also guilty of a crime. One young person recalled, as a child, visiting his father: 'They treated me like I was a criminal, like scum, and I hated going because I was frightened and thought that's how they must treat my Da [father] all the time'. Adults and children described visits as being 'scary' at first:

Interviewer – You said that it's scary at first for kids, for adults as well when they go in.

The wee ones don't really understand what's going on in that way. To me it should definitely be more child-friendly. I know it's prison and they're being punished for doing something wrong but it wasn't the kid's fault they done it wrong, you know what I mean.

Interviewer – When you were going in for the first time, how did you explain to the children where they were going and what it would be like?

Just told them that, you know, ... their Daddy did something wrong and he was put into prison and, you know, they were sort of fielding questions, asking what's prison like, and me trying to explain it to them but I'd never been before so I didn't really know what to expect either, so I didn't, but they weren't allowed to hug him and all.

Interviewer – Did they try to hug him?

One of them did hug him and the prison warden, or whatever you call them, the guard that walks round were 'no, no you're not allowed to do that'. (Mother focus group, Newry)

Visiting Hydebank Wood was described by one mother as 'horrendous'. Disabled toilets and wheelchair access are available in each prison but she noted that in terms of seating arrangements there were 'no facilities for disabled people'; visitors had to sit on plastic chairs. A child who regularly visited her brother in Hydebank Wood described officers in the visiting area as 'really, really strict, they're really pickish'. She compared Hydebank Wood unfavourably with the Juvenile Justice Centre at Woodlands where her brother had previously been detained. Commenting on Magilligan, another woman said:

Magilligan wasn't too bad. It was a quare [long] travel for us too, like, but they weren't as bad and I found out down there that the officers were actually quite nice, so they were.

In contrast, however, a Magilligan prisoner stated:

There's not even chat out of them [prison staff] or they don't try and make it a bit more relaxed because you want it as relaxed as you can to play with the child you know ... but there's certain members of staff there. You're on edge yourself because you know they're looking at you as if 'what are you playing at?' – you know what I mean? So it's just that way. (Prisoner, Magilligan)

Communal visiting areas create difficulties for prisoners and families to discuss private matters, especially when children are present. A non-governmental organisation worker explained how the tension and stress of public visits are serious inhibitions on families' ability to discuss personal and potentially explosive issues. In this context, visits are often 'unreal'. A prisoner may have endured a difficult period but disguises his or her

problems at the visit. Similarly, the prisoner's visitors are often concealing their emotions. When visits are ended abruptly, families rely on telephone calls. The worker noted how children are often 'sucked into the situation', becoming involved in disputes between parents.

Failure to provide necessary facilities, such as toilets for children, created problems during visits and sometimes resulted in time being lost on an already short visit:

I don't like the Maghaberry system because when I take my three children ...to the toilet, we need to go through these gates and everything, and when we come back they say, 'sorry your time is finished'. You actually need longer time and my wee girl was just one with Daddy inside, so she said, 'I want Daddy', and she was scared and then after she got sick, she was like asthma. (Focus group, Newry)

A prisoner told how his toddler had soiled himself during a recent visit, and had to be taken to be cleaned by the mother. The prisoner sat by himself for half-an-hour in the visiting room waiting for mother and child to return. While maintaining safe and secure procedures and practices, the prison service has a duty to identify and provide for children's needs. Prison officers stated their concern that toilets in the visiting area could encourage the passing of drugs. Time could also be lost from visits in Maghaberry as a result of security incidents and consequent lock-down of the prison. If an incident happened in any area of the prison the whole establishment is locked-down and movement prevented. Prisoners stated that this could happen up to three or four times a day, and that time lost on visits was not restored. The research indicates that security and control takes precedence over the 'best interests' of children.

In a group discussion, children aged 7-9 agreed that, initially, visits were 'scary'. They then appeared to have normalised the experience:

When you go in to the visits area 'there's a play pen in the corner just when you go in the door and you go over there and you either play or draw... They've got wee dolls and they've got tractors and stuff. I don't really play; I just draw. I draw a picture of him [her brother], and then I take it to him and then I leave. (Girl, aged 8, focus group)

They're friendly dogs but he stopped at my brother twice. ... And he didn't have any drugs. It's because he [the dog handler] supports Man. U. and [her brother] had a Liverpool top on. Both times [her brother] had a Liverpool top on. (Girl, aged 8, focus group)

Interviewer – What's a closed visit?

'Well there's a wee room where there's glass and there's a phone. You don't have to use the phone so you don't. Because whenever you go in and you use the phone you can hear your echo and stuff. It's pure class so it is, because whenever you go in and if you use the phone, but then if you don't use it, you don't. (Girl)

Interviewer – What was it like on your closed visit?

Class!. [Interviewer – Why?] Because you can bang on the glass thing and it never breaks.(Boy)

Interviewer – Do you prefer the ordinary visit or closed visit?

None.[Interviewer – Why?] Because they're both boring.[Interviewer – What would you rather be doing instead?] Going out.(Boy)

Interviewer – What are the prison officers like?

They're nice. And whenever you get a closed visit they give you two pictures that's already drawn and you colour them in ... My two was of a clown and I can't remember what the other was. (Girl)

You can slip food and drink in under the glass thing. (Boy)

A girl stated her brother was to be released in two or three weeks, so the next visit would be the last. Her cousin was also in prison and she visited him in Hydebank Wood.

Another girl, aged 10, visited Magilligan and enjoyed visiting because 'its nice to draw and stuff'. The women who organised the play area were 'nice' but she was 'afeared [afraid] of those dogs' when she entered the prison. Older children also agreed that some aspects of prison visiting were 'sweet' or 'class':

It was class. It was actually class in there. ...Trust me, it was the best craic [fun] ever.

One child was frightened of being searched by the drugs dog, but the rest enjoyed petting the animals:

Interviewer – Do they search you when you go in?

Yep.

Yeah, with a dog.

Interviewer – What's it like having a dog?

Aw, it's class! They just sniff around ya and you can pet 'em.

You just walk through the middle and the guard searches you, and then the dog searches you for, like, drugs and things. For dope and crack... I know too many things. I know stuff I shouldn't. [saying in a bragging way] ... I know about dope, crack, pot, weed, skunk...

Fieldwork notes from the discussion with older children (aged 10 to teenage) indicate how, for some children, visiting prisons was no longer unusual or frightening but had become a part of normal life. One boy had been to visit all three prisons, having several imprisoned relatives, and did not mind going, saying that he quite liked the sweets and vending machines – the worst aspect being when the vending machines were broken. Parties in the prison were 'class' because you got chocolate and got to see Santa. The boy expressed envy for his brother because he got to work for money while in prison, and their mother brought money to him during the visits. He was sure that everyone in his town knew about his family member's imprisonment, and he was clear that this was common and expected. Children knew the routine of prison visiting well.

You just go in and you talk to them. You're not allowed to go up to them or anything...They're not allowed off their seats or nothing. They get special coloured seats. They get green seats, we get blue seats. (Boy)

[Interviewer – How long does the visit last?] Depends, depends on their rank...they're like 'standard', 'basic' or all, it depends. It's like a holiday camp! [laughs] I don't know what they're complaining about! [laughs] They get the PlayStation up there, they get sweets [laughs] and when you're behind [in prison]...people can't attack you. (Boy)

4.9.3 Family visits

Hydebank Wood provides monthly 'family visits' to eligible prisoners, normally prisoners under 18 years old and prisoners with children. They are additional to normal visit allocation and their purpose is 'to enable inmates/prisoners who have children or juvenile inmates to spend time with their family to help create and strengthen family bonds'. They take place in a 'purpose built room' in the visiting complex, giving prisoners the opportunity to play with their children.⁷⁷ Although the intention is good, mothers in a focus group discussion were critical of the provision as the following exchange illustrates:

I've had a family visit. I find it very phoney [fake], it's all very clammy. Maybe because I'm an asthmatic. ... The windows are very high anyway; I don't think you're allowed to open them.

I think you can spend a bit of overtime with them as well as you get, kind of ... you run out of things to say.

You've got nothing to talk about.

I've got plenty to say but coming from a mammy it's not the same as, say, coming from boys his own age and maybe his Father and his brothers because they'd have more in common. ... I arrange the family visit for his father as well. I just lay back in the couch and watch his father play cards because I just love that and seeing my children having that back in life. (Mothers, Newry focus group)

4.9.4 Child-centred visits

An example of positive practice by the Northern Ireland Prison Service is the provision of child-centred visits run in each prison. Child-centred visits take place after a regular visit. The child remains in the room with their prisoner-parent while the other parent or carer goes for a snack. The child thus becomes the focus of the prisoner-parent's attention. Child-centred visits are supported by Family Support Officers (prison officers) and by NGO workers. They are highly valued by prisoners in Maghaberry and Magilligan and their families.

The child-centred visits are unbelievable like, really, really brilliant – love them. (Prisoner, Magilligan)

Family visits are great, great all round, for the kids are able to get up and move about and stuff whereas, before they started the family visits, you're sat in the chair and you can't move, you know. If a child falls, you can't get up ... but it's important that there, once a month I get the family visits. It's a good wee distance to travel, about a hundred – all round trip about two hundred and thirty, two hundred and forty miles. So (they drive up) I'm happy enough with once a month but it makes it worth its while there with that family visit. (Prisoner, Magilligan)

... on a normal visit, Right? We can't leave the table so for most of that visit, the child's over in the crèche or running about playing. You don't see him on the visit. So when you get the child-centred visit it means we can walk about freely and go into the crèche and all with the child, and play the way he wants to play. (Prisoner, Magilligan)

It means a lot to him because, it's seeing wee stupid things like swinging him and running up and down and chasing him. He always brings two cars over – he wants me to push a car up, he wants to push one back towards me and there's a lot of toys get

⁷⁷ Hydebank Wood Child/Family Centred Visits. Promoting positive change

brought out. Anything he sees being brought out, he wants, you know what I mean? Straight away! Because there's a load of kids and they run and try and get all the toys and try and get the best one and all, but he just stands his ground and waits until he gets the red car so he can drive up and down. It's brilliant – I love it, honestly. Tremendous! (Prisoner, Magilligan)

Although child-centred visits are highly successful, it is a concern that they are restricted and are not equally available and accessible to all prisoners. They are also relatively infrequent. In Maghaberry, there was a waiting list in excess of six months for child-centred visits. A non-governmental organisation representative commented that child-centred visits are 'ideal ... perfect model' but are 'open to only a very small number of prisoners'. A further concern was the cancellation of child-centred visits due to 'staff shortages' and issues affecting individual prisoners. None of the mothers, interviewed in one focus group in the community, was aware of the existence of child-centred visits. Because child-centred visits are popular, they are offered not as a right but as a privilege. It is a matter of considerable concern that their withdrawal is used as a punishment for prisoners' infringement of disciplinary rules:

I was, like, 'Why are you taking child-centred visits off me for?' And he said, 'It's clear that you, that cellular confinement has no effect on you, this is the third time you've been down. I know that the child-centred visits they're something you'll think about in the future if you come in front of me'. So I said, 'You can't punish the kids' and so on and he got 'well [prisoners' name] it's you punishing the children – you're aware of what you're doing, so'. (Prisoner)

4.9.5 Children's parties

Family Support Officers also organise children's parties at Christmas, Hallowe'en and some other occasions. The researchers observed a children's party in Magilligan, organised by the Family Support Officer with the support of NIACRO, and a Christmas party in Maghaberry organised by Family Support Officers and Barnardos. At both parties, children played with their fathers, played games and had party food. The events were clearly enjoyed by the families and children. Unfortunately, ongoing industrial relations problems between prison management and the Prison Officers Association led to a 'withdrawal of goodwill' and the cancellation of children's parties at Easter and summer 2010. While these child-centred events are positive and encourage normal interpersonal contact between prisoners and their families, they are restricted not only in regularity but also in the numbers of children that can be accommodated.

Some of the children had been on special 'fun' days in the prison:

I sat on a Santa's knee and got a picture and chocolate.

Interviewer – And did you like it?

Aye, it was good.

It was chocolate, a chocolate Santa [he is very taken with the sweets he got].

You can have weddings too [his parents had been married in prison not long ago].

4.9.6 Extended visits for mothers and children

Hydebank Wood Women's Prison has recently developed an extended visits scheme for mothers to be with their children, recognising the particularly damaging impact of maternal imprisonment on children. The women's prison has a mobile facility

(somewhat like a caravan) used by women to be with their children in private. The facility is available from Tuesday to Saturday and it is hoped that overnight stays will be an option in the future, but these are not currently available. Women may spend up to six hours with their children in unsupervised contact and may cook meals for their children. The children's NGO, Barnardos, helps prepare women for extended visits. Women's expectations for such intense visits are, understandably, often high. This places women under pressure, especially in circumstances where their children become bored, frustrated or unresponsive during the visit. Whilst the principle of intensive, close visits between mothers and their children is positive, the caravan is within the prison and visits are time-limited. The potential for mothers to internalise issues and problems that arise during visits is high. Follow-up work by Barnardos is an important opportunity for these issues to be identified and discussed. The prison service notes that feedback from mothers has been 'very positive' about this facility.⁷⁸

4.9.7 Book-Tape initiative

A further initiative is the Book-Tape initiative which enables parents in prison to read and record a story which can then be taken home by the child, although in Maghaberry the book must later be returned.

He was able to make them a wee tape. He read them a book on a wee tape ... but you know what really gets to me, the government are now saying that children with both mother and father growing up do better in life than single parents, so why not push for the kids to get seeing their daddies more? If the government's saying it's giving the kids a better chance in life then, alright their daddy's in jail for whatever they done but the kids are innocent, so they are, you know what I mean. (Mother, focus group)

One mother had put a photograph of the father in the baby's cot so that they could look at him while listening to the recording.

4.9.8 Extending contact and gaps in provision

Despite these provisions, mothers felt that greater contact between imprisoned fathers and their children would be in the children's best interests: Prisoners recognised that both they and their children were missing creating special memories and experiencing normal life together:

... my other son, I've found that, you know, he's losing all his wee memories that we would've had when we were out – he would speak to you – the odd wee things, you know, but very rarely now; so it's getting to the stage he only really knows prison now. So he's come up every week for the last two and a half years but you know this is where (name's) wee memories will go now. He's only going to know when I leave here. His memories of me is only going to be me in prison which is a bit sad, you know? Because we had done some really cracking wee things and good holidays. (Prisoner, Magilligan)

A particular gap in provision which was raised in the research by parents and professionals was the need for visits aimed specifically for older children and teenagers. Professionals noted that many young people who as children had visited parents in prison, lost interest and sometimes lost contact, when they were older as minimal provision was made for them in the visits area.

He [14-year-old son] does come with my other three children but to be honest I prefer when he's not there because it's two different types of visit, you understand? I've got

⁷⁸ Correspondence to the Research Team from NIPS 13 April 2011

young ... toddlers so I've got an older son there that I can talk about things differently and my second oldest (name) his wee ears are pricking, you know and he hears things that whereas if he played the PlayStation or something – he wants to hear what's being said because he's intrigued but the things I need to talk about with (teenager) I certainly don't want to be mentioning in front of my 10-year-old. (Prisoner, Magilligan)

Prisoners, families and professionals agreed that young people's activity-based visits were essential alongside special visits where they could visit parents to discuss personal matters without other family members present:

Well the simple thing ... an example I can give you for that there suggestion would be, there's a brilliant gymnasium in here – the equipment is unbelievable, you know there's table tennis, there's volleyball, there's five a side, there's five or six PTIs [physical training instructors] up there, gym instructors, you know? If there was a team visit, to be taken in the gym, where you had, if you had X amount of prisoners and you knew how many children were coming, you could have two wee teams of football. (Prisoner, Magilligan)

Prisoners, families and professionals also agreed that children should be given the opportunity to view inside the prison, including their parent's cell. It was considered this experience would allay fears provoked by not knowing where the imprisoned parent lived and slept:

My wee girl thinks that we're all in orange jumpsuits, and what have you; dogs, guns and all sorts. It'd be good, it might help as well for boys really. I've two girls; it would help if you could get maybe your kid up into the jail itself to let your child, especially your wee lad, see your cell, see where you go to education, see where you get your dinners and sort of maybe sit him down and tell him. Let him see that there's no men running about with shot guns... Explain to them that this is where I spend most of my time until I get out. And it's not a very nice place to be but its not... they think its all madness. There's people getting beat up and whatever it is they watch on TV. So it would be good to get the child up maybe once. (Prisoner, Maghaberry)

I'm thinking it would be good for maybe my wee girl to come in, on like a Sunday; four, maybe five, fathers to get their kids in that's asking questions. To sit in your cell, to see what you're living in. They're probably thinking you're living in a dump with cockroaches and lice and all sorts. And maybe let them see where you go out and get your dinner, go to education, or go to work class, to the workshops or whatever, and sort of explain to them exactly why you're doing the work and why you're going to these classes and learning the guitar or whatever it is you're doing. (Prisoner, Maghaberry)

He [the child] would like to see where I am ...when I bring him out to the toilet, he goes, 'is this where your house is?' Know what I mean. 'cause he's inquisitive that way, he would want – now he's a nosy wee bugger like, so he would want to see. But that would be a good thing – let the visitors or your kids see exactly where you are; what way you are exactly. If you're standing on the phone he knows exactly where you are on the landing. (Prisoner, Magilligan)

An on-site visit had been arranged for some families in each of the prisons and this was thought to be very useful for those involved. The limitation is that this takes place only occasionally and is not extended to the majority of parents in prison or their families.

The prison service visitors survey (2008, published 2009) conducted by independent researchers, and based on 316 completed questionnaires across the three prisons, established that almost half of all visitors attended the prison weekly for at least three months. Over 40 per cent were usually accompanied by children. Almost three quarters

travelled by private car, but 10 per cent reported problems with transport arrangements. Less than half (42.7 per cent) were aware of the Assisted Prison Visits Scheme and 79.8 per cent were 'satisfied' or 'very satisfied' with visits arrangements. Approximately three quarters used the Visitors' Centre facilities and Visiting Centre staff were considered friendly by the overwhelming majority. Most visitors were positive about prison visiting rooms and three quarters of those accompanied by children described facilities as 'good'. Visitors were less positive about facilities for older children and adolescents: only 40 per cent considered facilities for young people 'good' or 'very good'. Over 70 per cent considered prison staff helpful, however, less than 25 per cent of visitors to Maghaberry had asked Family Support Officers for help. Only half of all respondents were aware that child-centred visits were available. Approximately a third of those with children, who were aware of the availability of child-centred visits, had used them. Of those who had used child-centred visits, most considered them 'important' or 'very important'. Similarly, a third of visitors were aware of family fun days but over 90 per cent of those who took children on fun days found them 'good' or 'very good'. Over 75 per cent considered it important to help children come to terms with having a parent in prison and rated help with understanding and coping with children's behaviour as important.⁷⁹

Comments made by respondents in the survey returns from the Maghaberry Visiting Centre included the following:

Found it child friendly. System seems to be 'soft' and friendly. Not as cold as I'd feared. (Parent of 7-year-old)

Likes to play sometimes in crèche. Finds it good. (Parent of 5-year-old)

Due to child's age quite happy to sit at table with brother. (Parent of 13-year-old visiting sibling)

Internet is helpful. Children can communicate with Dads. Would be good to get Dad to email back. (Parent of 13-year-old)

Play area could be more open on both sides (Parent of several children aged 1-14)

More comfort. Too noisy. (Parent of children aged 1 and 6)

Good to have [play] area to go into. (Parent of children aged 1, 9 and 17).

Nothing to occupy them for the hour. Children are so young they get fed up and need occupied. (Parent of children aged 3 and 16 months).

Most kids don't want to spend too much time with daddy. More interested in the play area. (Parent of children aged 6, 7 and 6 weeks).

Recommendations from these parents included a more open play area where parents could view their children at all times; children being able to email their parent in prison; a tour of the prison for children to view and understand where their parent lived; not locking the door behind children before they were seated; a more secluded area for parents and children, away from other prisoners; more accessible toilet access and nappy changing facilities during visits; activities at tables in the visiting area so that children could play with their parent rather than going alone to a separate play area.

⁷⁹ Northern Ireland Prison Service (NIPS) (2009) *Visitors Survey for 2008* pp. vii and viii

4.10 Family Support Officers

Each prison has at least one Family Support Officer (FSO), a prison officer with special responsibility to liaise with prisoners and their families and to offer support. Family support officers in Magilligan and Maghaberry are involved in the organisation of parent support groups in the community. The support offered by FSOs is greatly appreciated by families.

If I could take my shirt off, I'd give it to him. He's made me a stronger person ... He's there to help me genuinely. He's given me the information I needed. Sat there and talked to me. (Parent, focus group)

Spoke to you with respect. (Parent, focus group)

It is clear from the research that the work of FSOs (prison officers) is inadequately resourced. Magilligan has one FSO who, at short notice, can be transferred to other duties in response to 'staff shortages' (given the unusually high ratio of officers to prisoners, this is inexplicable). Professionals and NGO workers considered that the situation at Maghaberry with three dedicated FSOs was a better arrangement. In Hydebank Wood, there are five FSOs but they also perform other roles in the prisons meaning that at times there may not be any FSO on duty. Combining the role with other prison duties may lead to a lack of continuity for officers, prisoners and families.

The most recent inspection of Magilligan found that the one full-time Family Support Officer 'provided good support, but the service was stretched'.⁸⁰ The officer was a qualified counsellor and had received training. The complexity and diversity of his work was noted by the Inspectors: information support and personal advice to prisoners and their families; liaison with social services and other agencies; organising and facilitating children and family days alongside NIACRO staff; two monthly family support groups in the community. The family days were organised in the prison gymnasium four times a year and were open to all prisoners and their families. The fragility of this provision was noted by the Inspectors. At the time of the inspection, industrial action by the Prison Officers' Association had caused one family day to be cancelled and the following planned day had also been cancelled. The Family Liaison Officer 'gave very good support to prisoners and families' and prisoners 'had good opportunities to attend parenting and relationship courses that included their partners'.⁸¹ Despite this positive endorsement of family liaison work, however, the Inspectors questioned the adequacy of one post to meet the needs and demands of family support across the entire prison. The demands on this post were exacerbated by the Family Support Officer occasionally, and without warning, being reallocated to 'normal officer thus temporarily abandoning work with prisoners and their families. The inspection report recommended a review of provision to secure and expand this important work.

It was clear from our observations and interviews with families and prisoners that Family Support Officers are dedicated to their work, some carrying out work unpaid and in personal time. The work of FSOs should be protected, enhanced and developed by the Prison Service. Their role should not be diminished by temporary or arbitrary reallocation of responsibilities within the prison.

Training and support for the family support role within the prison is also crucial. Some of the Family Support Officers have been in post for a considerable time and are well

⁸⁰ HMCIP/CJINI (2010) as above p. 63

⁸¹ As above p. xvi

experienced but others are newer to the role. There is no bespoke training provided. This contrasts with the Scottish system where the NGO Families Outside is involved in training recruits to the prison service and prison managers.⁸²

As mentioned earlier, the research shows that families and children have differential access to services. Interviews demonstrated that access to information is uneven. Some parents had no knowledge of child-centred visits or family support groups. Families had varying levels of knowledge about the role of Family Officers. NIACRO is provided with details of families only with the consent of the prisoner, leaving many families without support. It is important that all families are provided with appropriate information. It is appropriate that all families are provided with information and that children are provided with age-appropriate information.

4.11 Family support groups

Each prison has a prisoners' family support group. In Hydebank Wood the family support group is organised by families but held within the prison. The Governor and other senior prison staff attend. The Magilligan Family Support Officer organises two groups outside the prison, in Limavady and Ballymena. Observation of these groups demonstrated the trust and respect established between the officer and families. The group gave families the opportunity to express fears, feelings of shame and stigma, anxieties about their relative's imprisonment and concerns and hope about release. Maghaberry has a newly formed group which meets outside of the prison and is organised by a non-governmental organisation with the support of the Family Support Officer.

4.12 Support from non-governmental organisations

Non-governmental organisations provide much-needed support for families. The Northern Ireland Prison Service contracts a number of NGOs to provide support for prisoners' families. The benefit of the involvement of NGOs is not only the compassion, expertise and enthusiasm of their staff but also their independence which is highly valued by prisoners and families. NIACRO manages the visitors' centres in Magilligan and Hydebank Wood and its childcare staff work with children in the play areas during visits. NIACRO's Family Links service offers advice on finance and resettlement and practical family support. NIACRO staff support the prisoner and their family by liaising with other agencies to ensure the provision of specific assistance. NIACRO offers transport to each of Northern Ireland's three prisons. Barnardos offers parenting classes in the prisons and support to parents in the community. The Quaker Service manages and staffs the visitors' centre in Magilligan and its child care staff provide support for child-centred visits. The Prison Fellowship organises a family support group in the community and provides food hampers and gifts for children and families at Christmas. NGOs in conjunction with the Northern Ireland Prison Service also have produced an invaluable range of information for children, parents and prisoners, including pamphlets written in child-friendly format, DVDs and e-learning packages. Other NGOs, including Extern and Action for Children, provide support for families and children in the community. These are just a few examples of the support offered by a wide range of NGOs. Northern Ireland also has a strong tradition of prisoner and ex-prisoner self-support groups involving politically affiliated prisoners, their families and communities.

⁸² Information available at: <http://www.familiesoutside.org.uk/training-available-from-families-outside/>. Last accessed 28 March 2011

In focus groups, family members spoke positively and warmly about the support offered by NGOs. Instructively, they considered the NGO workers were non-judgemental in their approach.

4.13 Parenting support programmes

The NGO, Barnardos, offers a range of parenting support programmes in each prison. These are aimed at helping parents in prison to participate in the parenting role to the fullest extent possible and to learn about positive parenting. A pre-release programme also supports the parent in prisoner and their spouse or partner in the community to consider the issues they will face on release and during resettlement. Barnardos Parenting Programme was considered very useful by fathers in Maghaberry, offering them support in developing effective parenting skills:

It's brilliant. It's very educational.

It gives you a better understanding of your kids when it comes to talking about certain things. Maybe spot different behaviour. [Interviewer asks what sort of behaviour] Maybe she's been drinking or something. You can talk to her about it. Explain to her about alcohol or drugs or whatever it is.

I'm in a position now where I'm more open for my wee girl to come and talk to me about anything she wants to.

It gives you better understanding of what way kids think with their wee minds, from a young age right through til they're teenagers.

4.14 When contact is not appropriate

While contact between prisoners and families is assumed to be important and always to be encouraged, it is not necessarily in each child's best interests to visit their parent in prison. Identifying and acknowledging the best interests of the child is central to the decision about whether or not a child maintains contact with the imprisoned parent. It is a decision that should take account of the child's wishes through appropriate, informed consultation and also of the child's evolving capacity. In discussions with social workers there was considerable disagreement about how much information children should be given regarding the context, circumstances and consequences of their parent's imprisonment. This issue is central to the debate about children's 'right to know'; their right to be involved in decisions that impact on their lives and the provision of independent advocacy to enable children to make informed decisions. Where there are issues of risk for children, for example if there has been domestic violence or abuse, a 'supervised visit' may be directed by a court or social services. These visits may be supervised by a social worker for the purposes of protecting a child at risk. A key issue here in meeting children's interests was resourcing and the availability of social workers to accompany children. Some of the fathers in prison interviewed for the research were being refused access by their children's mothers and were in the process of going to court to seek access. The court will consider the child's safety and best interests in coming to a decision. Limited social services resources should not be a barrier to children visiting a parent once it is established that this is in their best interests.

4.15 Temporary release and pre-release schemes

Prisoners may apply for temporary release (including compassionate temporary release) in a number of circumstances, some of which may relate to their children, for example in the case of serious illness or death of a family member, or special celebrations such as First Holy Communion or family weddings. Prisoners apply for temporary release under Rule 27 of the Prisoner and Young Offender Rules, the application is considered subject to risk assessment. A small number of prisoners, including in some high profile cases, have absconded under the scheme, attracting unfavourable media coverage. The researchers interviewed one prisoner who was refused temporary release to attend the funeral of his very young child who had died as the result of a tragic accident:

I've five children. I just lost a child while I was in here. I didn't get out on parole. She was killed just before her second birthday, a week before her second birthday. Didn't get parole or get out for her funeral...Even to this day it's still rips me apart.

Prisoners nearing the end of their sentence may also avail of pre-release home and resettlement leave aimed at 'placing trust' in the prisoner and allowing him or her to 'renew his home ties and to get in touch with prospective employers'. Pre-release is 'not a right' but a 'privilege to be earned'.⁸³

4.16 Release of a father/mother carer

The Northern Ireland Prison Service resettlement strategy⁸⁴ recognises the importance of family relationships to a prisoner's likelihood of successful resettlement. Resettlement plans should be developed during prisoners' induction into the prison and a needs assessment should include accommodation needs, education and employment, maintaining family ties, financial issues such as benefits entitlement and a literacy and numeracy test and assistance with substance misuse and healthcare needs. For some prisoners, 'working out schemes' are available towards the end of their sentence to provide the opportunity to gain work experience in the community prior to release.

The Northern Ireland Prison Service has established resettlement teams within each prison and prison service and probation board staff are co-located with NGOs, including NIACRO, Barnardos and Housing Rights to manage prisoners' resettlement needs. The Prison Service is also in the process of updating the resettlement strategy, based on nine pathways to address offending and reoffending, which is to be issued for consultation in 2011. The most recent inspection of Magilligan noted the children and families pathway within the current resettlement strategy but revealed that there was no named person or action plan to take forward and manage the pathway.

Although families were keen for their family member to return home, some were at the same time anxious about the implications of the return, especially following a long sentence. Based on previous experience, some families were anxious that the police and other authorities would not allow a fresh start:

It was him [my son] only out for a while ... but every time they [the police] seen him in town they were always calling out saying they want to speak to him about this or that

⁸³ NIPS: <http://www.niprisonservice.gov.uk/index.cfm/area/information/page/temporaryreleaseschemes>

⁸⁴ Northern Ireland Prison Service (NIPS) (2004) *Northern Ireland Prison Service Resettlement Strategy June 2004* Belfast: NIPS

even though he hadn't been involved, just for badness. I think they were just doing it for badness.

*That's one reason why I'm dreading [my son] getting out – because of the police. They hound him, put pressure on him. They're going to undo everything that I have done this last two and a half years, because there's nothing that gets their back up as the way the police treat them. You know if you're being harassed like that all the time ... it does get to you. If you're being constantly harassed or blamed for an incident it does get to you.
(Mothers in Ballymena)*

One woman, whose son was due to be released, worried about the impact this would have on her younger children. She stated that she would allow her son a final opportunity to reform and change, otherwise she would bar him from the family home to protect her younger children. Not all families were reunited. Some fathers were not allowed back into the family home because of child protection concerns. In these cases, the best interests of all children involved must be a key consideration in making post-release arrangements.

The role of non-governmental organisations is essential in providing pre-release support for prisoners. Barnardos facilitates 'pre-release' work with prisoners during the final twelve months of their sentence. This programme establishes 'expectations, provides a 'reality check' and considers available choices and their consequences. 'Choice' is a significant barrier for prisoners as they realise that they have little control over their lives. In Magilligan and Maghaberry, Barnardos offers a pre-release programme that brings prisoners and their partners together to anticipate and try to resolve issues that will arise following release.

Regarding resettlement, the CJINI/Prisons Inspectorate's inspection of Magilligan⁸⁵ found: 'The resettlement policy was comprehensive, but did not contain specific targets and was not driven by a regional policy for Northern Ireland. The range of resettlement services appeared appropriate, but there had been no formal needs analysis'. The inspectors considered that 'good use was made of temporary release to allow prisoners to maintain contact with their family'.⁸⁶ They recommended that managers evaluate the need for additional Family Support Officers, given the current situation where one officer was responsible for this area of work for the entire prison⁸⁷. NIACRO has recommended the development of family group conferencing to help prisoners and their families prepare for resettlement.⁸⁸

5. Mothers and babies

Council of Europe Prison Rules require states to provide appropriate facilities for mothers with young children in prison, including crèche facilities with fully trained staff. This is not available in Northern Ireland. Mothers in Northern Ireland are permitted to keep their baby with them until they are 9 months old, so long as this is considered in the child's best interests. Other European regimes provide for children to stay longer with their mothers, usually until the ages of 2 or 3.

⁸⁵ HMCIP/CJINI (2010) as above para. 9.1

⁸⁶ As above para. 9.6

⁸⁷ As above para 9.76

⁸⁸ NIACRO (2009) *Response to NIPS Draft Family Strategy* Belfast NIACRO

Figures obtained from the Northern Ireland Prison Service record that four babies were accommodated with their mothers at Hydebank Wood during the period June 2004 and June 2007, the lengthiest stay being over nine months.⁸⁹

The unannounced inspection of Ash House by HM Prisons Inspectorate and the Criminal Justice Inspection Northern Ireland⁹⁰ described arrangements for mothers and babies as 'rudimentary' with 'no policies and no special accommodation other than a larger cell with integral sanitation in which babies would be locked with their mothers'. At the time of the inspection there were no babies in prison but the inspectors examined an empty and cold 'mother and baby' cell comprising a screened toilet, fridge, storage facilities, a bed and a cot. There was one pregnant prisoner in Ash House during the inspection and the inspectorates complemented the 'comprehensive arrangements' made for her ante-natal care. Their report recommended: the development of policy and procedures for mothers and babies, including child protection arrangements and links with social services; that pregnant women should be able to use the 'mother and baby' cell if it was not occupied; and that babies should not be locked in cells.

Following the inspection, the Northern Ireland Prison Service commissioned a survey of the 'resettlement needs' of female prisoners. The resulting research found that 60 per cent of women surveyed were mothers and, of these, one-third was on remand. Between them, the mothers had 30 children and eight adult children. Remanded women were mothers of 16 children, all of whom were under 14. The authors warned, 'we cannot underestimate the impact of a parent being sent to prison', noting that:

*The majority of women prisoners were mothers and these women often felt keenly the impact of being separated from their children. Those on remand have the additional problem of not knowing how long they'll be separated from their families. ... some mothers interviewed were not allowed access to their children either through a court order or a decision made by the father of their child.*⁹¹

The study was critical of the 'limited child contact within the formal setting of the prison environment' and found that 'restricting visiting hours appeared to make many of the mothers uncomfortable'. It concluded that 'it is not clear that the existing facilities for visits provide an environment that encourages parental bonding'. It was noted that women have to meet their families surrounded by 'young offenders' and their visitors. More positive developments were noted, including child-centred visits and a family room with soft furnishings and toys in the main visits area. However, take-up of child-centred visits was low and staff were 'looking into this'. NIACRO had volunteered a child-care service for prisoners who wished to see their children individually. Recommendations included 'increased contact between mothers and children, in a more sympathetic setting'. Children should be 'involved throughout the mother's sentence'; 'future accommodation for women prisoners should incorporate provision for children to stay overnight with their mother in prison'; 'family centred visits should be further developed for the women in Ash House'; 'the needs of fathers as substitute carers should be considered when organising visits and other parental issues'; 'families should be included in the reintegration process wherever possible to negate a risk of family break-up or estrangement during sentence'. As stated above, child-centred visits

⁸⁹ Figures obtained from NIPS, correspondence 1 October 2007

⁹⁰ HM Chief Inspector of Prisons and Criminal Justice Inspection Northern Ireland (HMCIP/CJINI) (2004) *Report on an unannounced inspection of the imprisonment of women in Northern Ireland: Ash House Hydebank Wood Prison 28-30 November 2004* Belfast: CJINI

⁹¹ Northern Ireland Prison Service (NIPS) (2005) *The re-integration needs of women prisoners in Northern Ireland* Belfast: NIPS

and an extended visits scheme have been introduced in Hydebank Wood for female prisoners with young children and women can access two child-centred visits each month.

Following the 2004 inspection, the prison service also established a multi-agency working group tasked with developing policies for mothers and babies. The resulting policy allows mothers to care for their babies in prison up to the age of 9 months, but if it is considered in the baby's best interests they will leave the unit before the full period. The policy concedes that Hydebank Wood is 'not equipped to cater properly for children above 9 months'. A multi-agency admissions board has been established to determine whether a mother may keep her baby in prison. Women making applications to the board can be accompanied by a friend during deliberations but the 'friend' must be another prisoner or a prison officer. The policy requires that at least one member of staff on duty on landings housing mothers and babies should have received child protection training, first aid and resuscitation training. The 'best interests of the child is the primary consideration, but, in the prison context, not the only one'.⁹²

Research for the Northern Ireland Human Rights Commission was conducted in Hydebank Wood from December 2005 to March 2006, involving observation of daily life in the prison. Interviews were held with women prisoners, prison officers and professionals working in the prison, including teachers, probation officers, clergy, healthcare staff and staff from non-governmental organisations. At the time of the initial fieldwork, Ash House had a certified capacity of 56 in single cell occupancy on four landings (the separate landing for longer term prisoners had not yet been built). The 'mother and baby unit' was comprised of two standard cells knocked together to make one larger cell with integral sanitation. The education block and healthcare centre were shared with the male young offenders although women and boys were not permitted to come into contact. Managers were constantly under pressure to meet the distinct and complex needs of women, including remand and sentenced women, children and 'young offenders', long-term and life-sentence prisoners; committals, short-term sentenced; immigration detainees, women charged with sex offences, women with mental health problems, pregnant women and mothers with babies. It was not possible on four available landings to meet this complex range of needs, and the diverse population and restricted environment led to an unstable, sometimes volatile environment.

Successive inspectorate and human rights commission reports and, most recently, an independent review of the Northern Ireland prison system have recommended the establishment of a discrete purpose-built women's custody unit for Northern Ireland.

6. Conclusions

Developing strategies, policies and practices to provide adequately and appropriately in identifying and meeting the needs of prisoners' families should take as its starting point international child rights standards. The issues raised in this report on Northern Ireland would be resolved, at least in part, by the incorporation of the UN Convention on the Rights of the Child into domestic law. This would place judicable obligation on the state to provide for children's needs without discrimination. The key principles engaged are: non-discrimination (Article 2); the 'best interests of the child' (Article 3); life, survival and development (Article 6); participation (Article 12). Each of these principles is

⁹² Northern Ireland Prison Service (NIPS) (2006) *Prison Service Mother and Baby Policy* Belfast: NIPS para. 3.10

central to operational policies and practices regarding the rights of children whose parent or guardian, or sibling, is imprisoned or detained. There is no evidence from our research that these principles have been considered or addressed appropriately by the prison service in developing policies and, instructively, responding to recommendations by independent researchers, independent monitoring or formal inspection. The schematic responses to such recommendations indicate a marked reluctance by the prison service to prioritise the rights of children. There is little indication, other than the positive relationships developed by Family Support Officers, of even a cursory grasp of child rights standards.

Article 9 obliges the state to provide children of imprisoned or detained parents with 'essential information' regarding the location of their custody. This should include the opportunity, as in Magilligan, for children to view inside the prison, including accommodation. Article 12 affirms the child's right to have their views taken into account on any matter or procedure affecting them. Children of imprisoned parents should have their views sought and be 'given due weight' appropriate to age and maturity. Information given to children and their responses should be supported by independent advocacy to ensure they understand complex issues and have their opinions taken into account. All policies and procedures regarding visits, conditions, telephone access and release plans should be discussed with prisoners' children. The conditions under which children visit their parents in Northern Ireland systemically breach Article 16, the child's right to privacy. More attention should be given to the protection of children's privacy before and during visits. This is particularly significant in a society with a relatively small population and few prisons. Particular prisoners have received considerable media attention, and are well known to the public. It is essential that their children are protected from intrusion.

Article 18 establishes the principle that parents share responsibility for bringing up their children. This responsibility, although recognised and supported by NGOs working in Northern Ireland's prisons, should be identified as part of NIPS core commitment to rehabilitation, reintegration and resettlement. Family support work, therefore, should form a central element in the work of prisons. Clearly this is not an issue solely for penal institutions, and the needs and rights of children with imprisoned parents should be recognised within Children's Services planning and appropriate targets should be established to meet identified needs. Adequate statistical information and further qualitative research is required to plan for these children's needs.

Recent media coverage, particularly regarding women prisoners and politically-affiliated prisoners, has paid scant attention to the potential harm done to the children of prisoners whose cases have been given sensationalist tabloid attention. Not only has this breached professional regulatory guidelines, it has compromised the 'moral well-being' of those prisoners' children in potential breach of Articles 16 and 17.

Sentencing legislation and guidelines should include a requirement that those responsible for setting a tariff should establish the needs of dependent children prior to sentencing. Legislation should restrict the imprisonment of mothers of young children to those exceptional cases of serious offending and violence.

Police officers should receive specific training in conducting arrests when children are present. Arrests in the presence of children should be justified and only occur as a last resort.

Consistent with Article 27, adequate financial support should be immediately available

to families on the imprisonment of a parent or carer. States are obliged to 'recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'. We observed situations in which children were unable to participate in visits because of the length of time and costs involved. There should be emergency and long-term funding available from state agencies to support dependent children when a parent is imprisoned.

As established previously, there are examples of good practice, specifically child-centred visits and the work of Family Support Officers. However, this work was marginalised by the Northern Ireland Prison Service, a clear indication being the small number of Family Support Officers, their limited budget and the understanding that at short notice they could be redeployed to mainstream duties. Given the centrality of this work in meeting the commitment of the prison service to rehabilitation, reintegration and resettlement, this marginalisation is unacceptable. It is imperative that the role of Family Support Officers is established as a core commitment within prison service operational policy and practice, and its provision ring-fenced and expanded to meet the needs of all prisoners' families that wish to work with family support programmes. There should be recruitment of more Family Support Officers and a specialised unit at each establishment, staffed by several Family Support Officers and supported by NGOs and researchers specialised in working with children and their families. The prison service should finance and commission appropriate training for all officers working with families.

In meeting the obligations of Article 6 (child's right to development) and Article 9 (access to parents), child-centred visits offer the most appropriate opportunities for parental contribution to the social and emotional development of the child alongside maintenance of personal contact. They are popular with prisoners and their families and current provision should be extended through the establishment of visiting areas dedicated for this purpose. This would enable child-centred work to be extended throughout the week and in the evenings, supported by an expanded family support staff. We noted evidence of some good play and recreational provision for younger children, particularly in crèches, but there is a lack of outdoor play space for visiting children.

Young people's visits should be initiated, and the advice of young people, relevant NGOs and Family Officers be sought in developing appropriate timing, organisation, location and conditions. The extended visits mobile unit for women at Hydebank Wood is a significant initiative and similar facilities should be developed for long-term male prisoners and their children. The Hydebank Wood unit should be available on weekdays after school hours to provide mothers with opportunities to assist their children's schoolwork and to maximise contact where it is in the child's best interests.

The research notes the problems experienced by families of convicted sex offenders. This is a complex issue involving media coverage, popular opinion and a range of voluntary and statutory agencies. Independent research should be commissioned to explore prisoners' and prisoners' families' needs in the context of child protection.

The important role of NGOs was evident throughout the research. At a time of economic stringency and cuts in public funding, it is imperative that this independent work continues to be supported by state funding. The independence of the non-governmental sector is crucial to the trust built and sustained with families often confronted with stigma, prejudice and marginalisation in their communities.

It was clear from this research that imprisonment affects siblings and other relatives

additional to parents and their children. Their needs also should be considered and we recommend equal treatment to children of imprisoned parents.

The Northern Ireland Prison Service has developed several positive initiatives to enhance children's experiences of contact with their parents, and managers. Family officers have received well-deserved recognition for their dedication, often giving many unpaid hours of their own time. As noted above, however, these initiatives are often disrupted by security measures or reallocation of resources in a system where security predominates over prisoner or visitor-care or rights. Fundamentally, there is a need for deep and long-term cultural and institutional change within the Northern Ireland prison system. This has been established in the recently published independent review of the prison system.⁹³ The review team noted the 'absence of effective leadership and operational management' and the 'security-led culture among prison staff, which developed during and has continued since the Troubles, and a culture of denial and compromise within the service as a whole'.⁹⁴ These 'fundamental and longstanding problems' have stood in the way of family-oriented developments and have too often resulted in a hostile attitude to families and children, rather than the respect they deserve.⁹⁵

There is also a need for cultural change within media coverage and public education, viewing children with imprisoned parents as victims and survivors of the criminal justice system and as rights-holders whose needs must be addressed. Central to this change would be professional training on prisoners' rights, imprisonment and its impact on families and the needs and rights of children with imprisoned parents and siblings introduced in the training of all social workers, teachers and others working in childcare professions.

⁹³ Independent Review Team (2011) *Review of the Northern Ireland Prison Service: Interim Report 28 Feb 2011*

⁹⁴ As above p. 11

⁹⁵ As above p. 9

Chapter 6: The Italian case study

By Lia Sacerdote with the contributions of Floriana Battevi, Edoardo Fleischner, Valentina Gaspari, Maria Piccione

1. Introduction

The current Italian legislative framework in criminal matters, modified several times during the 1990s, resulting in a more favourable context for recognising the needs of children and imprisoned parents, is one of the most progressive and aware in Europe in relation to taking account of the needs of children of prisoners – although considerable resistance still remains to applying certain aspects in practice. In addition to the Finocchiaro Law (L40/2001), which gives some mothers of children under the age of 10 eligibility for house arrest and has played a pivotal role in the overall framework of prison reform, a Ministry of Justice circular dating from December 2009 (Circular DPP: PEA 16/2007/2009),¹ calls on prison staff in all Italian prisons to give children visiting imprisoned parents the utmost attention, maximise all opportunities for contact between prisoners and children, and improve the quality of contact.

At present, very little data is available on the situation of children and imprisoned parents in Italy. Similar to many other European countries, the Prison Service in Italy does not systematically record the parental status of prisoners upon entry. According to the official statistics of the Prison Administration Department of the Ministry of Justice, there were 16,834 prisoners with children at the end of 2007.² This data is limited to prisoners whose paternal/maternal status is known, and therefore does not include those for whom this data is not available, or those who do not disclose that they have children. Using a study by EUROCHIPS and data from Centro Studi sulle Carceri in 2005, the NGO, Bambinisenzasbarre (Bambini), estimates that between 70,000 and 75,000 children in Italy are separated from a parent in prison on any given day each year. This number, estimated using the Council of Europe's annual SPACE statistics (2007), presents a clear discrepancy with the number provided by the Italian Ministry of Justice.³

The current research project, led by the Danish Institute for Human Rights (DIHR) and carried out by Bambinisenzasbarre in Italy, offered the latter an opportunity to make public some of its experience gathered over the last 10 years and to emphasise its core mission of safeguarding the child-parent bond during imprisonment, focussing on the best interests of the child.

Bambinisenzasbarre (Bambini) is a not-for-profit organisation (NGO) based in Milan, Italy, that assists and supports parents in prison, with special attention to the children affected by parental imprisonment. Bambini's mission is to safeguard and promote the

¹ Ministry of Justice Circular, DPP: PEA 16/2007: Penitentiary treatment and parenthood—supporting the entry and stay of children visiting imprisoned parents

² Data published by Department of Prison Administration, Ministry of Justice, www.giustizia.it, with caveat stipulating that the margin of error for these figures is high, given that parental status of prisoners is not recorded systematically in every prison in Italy. Research from this study found that 18 per cent of prison staff interviewed maintained that they did not enquire about or record parental status upon a prisoner's entry; in addition there are those imprisoned parents who do not disclose that they are parents

³ "Figli di genitori detenuti – Prospettive europee di buone pratiche", Bambinisenzasbarre, Milan 2007, translation of Children of Imprisoned Parents: European Perspectives on Good Practice, EUROCHIPS, Paris 2006

parent-child relationship during imprisonment, to raise awareness of the issues for children of prisoners and to advocate on behalf of such children. Bambini works in the three prisons in Milan. It is the recognised agency specialising in family issues linked to prison and as the link between prison and the outside world.

Bambini addresses the issue of the child-parent relationship through operational activities which provide a practical response to requests for assistance by imprisoned parents and their families, from inside and outside the prison. The *laboratori sulla maternità* and *laboratori sulla paternità* (parenting workshops for mothers and fathers) run in the prisons provide training tools and information for imprisoned parents. The *Spazio Giallo* (Yellow Space) is a child-friendly care and play area where child development workers are engaged to foster interaction between the child and the imprisoned parents. These types of activities have proven to be vital instruments in preserving the parent-child relationship and helping reduce the trauma for the child.

Bambini's research for this study revolved around the general organisation of prisons in Italy and the child-specific procedures in place. Specific focus was given to two issues:

- the arrival process for children who come to visit an imprisoned parent; and
- the approach and the awareness level of the prison staff with respect to the child's perspective and rights.

The survey addressed the experiences of children who, at the time of the study, had a parent in prison in Italy, the aim being to use this data for analysis and comparison to provide valuable policy recommendations.

2. Legal framework in Italy

2.1 Historical background

Until the 1990s, there were no laws in Italy concerning the rights of children and adolescents with imprisoned parents. Prior to 1990, there were a number of regulations set up to protect the dignity of prisoners and some of these regulations provided, directly or indirectly, support for parenting from prison. Temporary leave permits for prisoners were introduced for the first time in 1975 (L354/1975) and now, after a series of legislative changes, currently both remand and sentenced prisoners, irrespective of the evaluation of behaviour, can enjoy leave in case of necessity, for example, for a serious family event.⁴

The history of these regulations is as follows:

1975: Reform of the Italian Penal Code (Law No. 354 of 26 July 1975)

Prison Reform Law 354 aimed at placing the treatment of prisoners on a par with that of UN and European Council regulations regarding people who are deprived of their liberty. The Italian prison system has undergone a period of reform with a modernised Penal Code (to the one in force since 1931) based on the principles of rehabilitation and resettlement. According to Art. 15, the prison treatment '*must facilitate suitable*

⁴ Leave permits for good conduct granted only under particular conditions to sentenced prisoners (they must have served at least three years of sentence (at least 10 years for life sentence) and have displayed 'regular' good conduct. Surveillance magistrates grant if allows detainee to develop family ties. Maximum 15 days per permit; maximum 45 days annually

contacts with the outside world and family relations, providing for, in this sense, also the possibility of working outside the prison and returning at night (Art. 21).

1986: Gozzini Law (Law No. 663 of 10 October 1986)

Another positive step towards protecting a prisoner's family ties was made with the introduction of alternative measures to custody upon application by the Gozzini Law (L663/1983). The possibility of external work activities being applied broadened as it introduced the possibility of leave for sentenced prisoners with good conduct, whereby they could leave the prison to work and return in the evening (Art. 21). During the last three years of the sentence, the law allowed for release under supervision through social services in particular cases (Art. 47) and for access to alternative sanctions prior to imprisonment, thus promoting continuity of the child-parent relationship.

1998: Simeone-Saraceni Law (Law No. 168 of 27 May 1998)

Eligibility for alternative sanctions became automatic for offences which carried prison sentences of less than four years with the Simeone-Saraceni Law. This law introduced the possibility of house arrest for health or family reasons, especially for pregnant women and mothers with children under the age of 10. The law also applied to fathers, if acting as the primary carer. This law also established the minimum requirements for play areas operating in prisons or in women's sections in order to enable imprisoned mothers to keep children with them up to the age of 3.

2000: Decree of the President of the Republic 230, 30 June 2000

A law promulgated by Presidential Decree⁵ stipulating that, when feasible, prison allocation should be based on territorial criterion, that is, that prisoners should be sent to prisons close to their city or town of residence, and in general within the region of residence, thus helping family ties through proximity to home.

2001: Finocchiaro Law (Law No. 40 of 8 March 2001)

The Finocchiaro Law introduced special house arrest for mothers with children under the age of 10, even for sentences of less than four years, provided that there is no identified risk of the offender committing further crimes and that they have served at least one-third of their sentence. Art. 284 of the Penal Procedure Code stipulates conditions for house arrest whereby the subject is confined to a place of residence (or therapeutic institution, for drug-related prisoners, for example) and may have restrictions on contact. The subject may be authorised to leave the residence to work. L40/2001 also expanded on Art. 21 of the prison order (cf above) by adding extra time for assisting with their children in the community and, if there is no job, by allowing mothers the use of this option to leave the prison solely to take care of their children. Lastly, it provided the right for a third lawyer for representing the child to be established in the Italian special family court (known as the Family Court).⁶

Unfortunately, not all imprisoned mothers meet the legal requirements for eligibility for the house arrest option provided for by the Finocchiaro Law. There have been a number of difficulties in implementing this law, particularly in the case of foreign or

⁵ Any law promulgated by President of the Republic through a Decreto del Presidente della Repubblica (DPR, known as Presidential Decree) upon which it acquires the status and binding force of primary legislation.

⁶ Italian CRC/ Save the Children report (2009), Chapter 5, p. 60

Traveller (Roma) women who do not have a place to stay during house arrest (one of the conditions of eligibility being having a 'suitable house', as well as the limitations imposed by the requested requirements, such as no pending trials, no repeat offenders, and the requirement of having served one-third of the sentence. The inadequacy of the Finocchiaro Law in these respects became apparent over the years and led to changes which will be discussed below.

2.2 Mothers with babies: future reform

The Finocchiaro Law was established as a result of years of awareness-raising and lobbying with legislators and government officials by female prisoners and advocates. The law that was implemented in response does deal with the theme of parental ties during imprisonment, but proved to be difficult to apply because of the specific requirements which need to be met. As of December 2009, 73 children were still in prison with their mothers in Italy, most of them in Lazio Piemonte and Lombardy. Lobbying efforts with government legislators therefore resumed with the effect that the law was modified in March 2011.

At present, the Justice Commission of the Chamber is evaluating the possibility of approving a law that:

- can also be applied pending a trial to avoid imprisonment on remand, a key moment for preventing the traumatic interruption of the parent-child relationship, especially in the case of children under the age of 3;
- can also be applied to foreign national women who do not have a home in Italy, by using communities and support networks already existing in their direct environment.

Prison as a 'living environment' does not meet the requirements for an infant's regular psychophysical development⁷ and, more importantly, the separation of mother and child when the child turns three can be an extremely traumatic experience. Efforts must be made to minimise this trauma. Initiatives have been carried out in recent years on the regional level: Milan's ICAM⁸ pilot project, a special small prison for mothers with children under the age of 3, was launched three years ago by the Prison Administration of Lombardy, with the collaboration of the province, local authority and the region. The project aims to tackle this problem with the goal to reduce the damage done, pending new legislation. Over the three years to December 2010, it has provided accommodation to 144 children and 106 mothers.

3. Children and imprisoned parents

The following information is based on the knowledge and experienced gained by Bambini's work with children of prisoners and their parents over the past 10 years and is informed by other studies cited in Chapter 2.

⁷ Biondi, G. (1994) *Lo Sviluppo del Bambino in Carcere*, Milan: Franco Angeli

⁸ Istituto a custodia attenuata per madri

3.1 Imprisoned parents

Typology

During its work over the past 10 years, Bambini identified the following 'types' of parents in prison:

Fathers

- fathers with families that can take care of their children
- fathers legally separated from their partner, with rulings by the Family Court or the Ordinary Court stipulating conditions of contact with the children
- fathers who have committed family-related crimes (sexual abuse, abuse of minors or of partner) with rulings by the Family Court
- fathers who have killed their spouses or partners
- fathers addicted to substances (drug, alcohol) and gambling
- fathers who, as a result of detention, see the relationship with their children cut off because their partner leaves without any kind of legal separation
- fathers who had no contact with children prior to imprisonment, then "rediscover" their paternal role while in prison and ask to re-establish contact
- fathers who, due to arrest, could not carry out procedures for officially being named the legal father of the child
- fathers who are the primary carer of their children.

Mothers

- mothers with a family that can take care of the children
- mothers already involved with Family Social Services prior to imprisonment
- mothers referred to Social Services before or during detention
- mothers not followed by social services but without a supporting family or social structure (for example, relatives taking care of the child during detention)
- mothers with drug-addiction problems (involvement of Ser.T service, special approach with social worker and children)
- foreign mothers with children living at great distances
- mothers (often nomad) who could keep their children in prison with them if under the age of 3 but do not because they are not informed of this option; they fear social services; or relatives outside do not consent to this option.

3.1.1 Arrest

The arrest of a parent is generally a very stressful phase and potentially very traumatic for children. Children can experience high levels of anxiety, which can trigger a variety of trauma: fears of abandonment due to the sudden disappearance of the parent; fears that the parent is dead; or a sense of guilt, particularly in young children, who frequently feel responsible for the parent's departure. General arrest procedures in Italy are governed by regulations laid down in the Italian Penal Code.⁹

⁹ Italian Penal Code (Codice die procedura penale) Titolo VI art. 380-381-382-384-385-386-387

What happens to the children?

If a mother is arrested after being sentenced by a judge, the children are generally entrusted to the care of a relative; if there is no relative, they are put in the care of social services. If the mother is arrested at the scene of the crime, and the children are not present at the time, she is taken to the police station for questioning, where she has the opportunity to disclose to the police that she has children and indicate who should take care of them.

If the mother is arrested while committing a crime and the children are present, the mother is taken to a police station and the children are placed in the custody of relatives (or in the custody of an appointed person if there are no relatives).

However, often the woman does not disclose that she has children immediately, only later when she is already in prison. If the arrested woman informs the police that she has children only after she is imprisoned and then asks to take care of them, the prison social services has to be informed; they in turn will contact the regional social services. However, if the woman refuses the assistance of social services, the prison cannot follow up on her. When no carer is appointed, the children are put under the care of the local social services, which places them in emergency care. The Family Court is alerted and a temporary foster care procedure is launched by social services.

In general, the mother has little or no information about her child's whereabouts in those cases when there are no relatives to take care of the child and this can be a source of extreme anxiety for her. In theory, social workers have the possibility to consult with the mother in prison, but this does not usually occur until after the first weeks, or even months, of imprisonment.

The arrest of the father, in comparison to the mother, creates fewer emergency situations with respect to the children, as they tend to remain living within the family. If children are present when a father is arrested, Bambini has found that fathers frequently experience shame, particularly when faced with children's questions, and resort to fabricating "truths" to explain the circumstances.

3.1.2 Pre-trial detention

For imprisoned mothers, a central issue during pre-trial detention remains knowing the child's whereabouts. This can be particularly difficult for foreign women who cannot communicate directly with children living faraway. Another issue is deciding whether children under the age of 3 will reside in prison with the mother.¹⁰

For imprisoned parents with families who can care for children, two of their primary concerns are organising the first visit with the children; and what to say to the children.¹¹ Imprisoned fathers sometimes do not tell children the truth about their imprisonment, and instead fabricate stories (although it is often the mother or caretaker who lies to the children about the dad's whereabouts). When there is conflict with the partner, contact between the imprisoned father and the children may be cut off. Fathers who have been arrested, and could not fulfil necessary procedures to be named the

¹⁰ In Italy imprisoned mothers can keep their children with them until they turn 3, after which children have to leave and, in the absence of relatives, are put into the care of social services (Civil Code IX, art. 316 and following)

¹¹ Bouregba Alain, *I legami familiari alla prova del carcere*, Bambinisenzasbarre, Milan 2005

child's legal father prior to imprisonment, are assisted in contacting public officials for legal procedures.

3.1.3 Sentenced prisoners

During the sentencing phase, the court can consider alternative sanctions to custody,¹² particularly where the defendant is a mother. If the children have been entrusted to social services and the mother is sentenced for a long period of imprisonment, the child/ren is placed in a foster family (considered preferable to being in residential care). In this case, the mother may experience difficulties in keeping contact with her children and the foster care family, and might not be involved in decisions regarding her children. Arrangements for contact between imprisoned parents and their children will be discussed with reference to the national research study.

Visits

Remand and sentenced prisoners are entitled to six to eight one-hour visits per month with their children (L354/1975, Art. 28; Art. 37, r. app). Prisoners arrested for crimes listed in the first paragraph of Art. 4bis of the Penitentiary regulation (L354/1975) (which include Mafia related crimes) are entitled to up to four visits per month.

In order to maintain family bonds when prisoners have children under the age of 10, it is possible to obtain a higher number of visits and phone calls than stated in the regulation or have the opportunity to spend part of the day together with relatives in specific rooms and areas.

Communication with children

In general, prisoners are entitled to a weekly ten-minute telephone call (Art. 39, R. app L354) except for prisoners that come under Art. 4bis who are limited to two phone calls per month. Since April 2010, prisoners categorised as 'medium security' have been able to make calls to mobile phones using the prison's mainline system (Ministry of Justice Circular 26 April 2010) in a change to the rules introduced to reduce the negative effects and self-harm by prisoners.

3.2 Children

3.2.1 Arrest - Police and 'Carabinieri' in the presence of children

Another crucial point which has yet to be adequately addressed through regulations, policies and practices is the impact that methods of arrest, custody and control of the imprisoned parent can have on children, notably psychological repercussions. The training and awareness-raising of police and prison officers will play a key role.

Carabinieri

In Italy, the Carabinieri and the police¹³ have similar judicial arrest procedures. Bambini interviewed a colonel of the Carabinieri who stated that, in his view, the practice of the Carabinieri is that the presence of children when a parent is arrested should be regarded

¹² cf Legal framework above

¹³ Italy has a system of Police and Carabinieri: The Police report to Internal Ministry (Home Office), Carabinieri report to Ministry of Defence and both are responsible for justice, police and public security

as a 'humanitarian issue', not a procedural one and that therefore the Carabinieri approach children as sensitively as possible, trying immediately to locate a family member to take care of the child/ren. If no such person can be found, the police should not search the home in front of the child, but take the child to another room to try to make the experience less traumatic. If the mother is arrested and there is no relative to take care of the child, preference is given to house arrest. In a case where there is no alternative but to imprison the parent, every effort is made to ensure the child does not witness the imprisonment. He felt that these practices have been developed over time, consolidated and applied in a more or less respectful manner, when the arrest takes place outside metropolitan areas, in provincial Carabinieri stations where there is more likelihood of people knowing each other.

Police officers

The police department deals with crimes of mistreatment, neglect and abuse of children, with the use of professionally trained people. The Judicial Police Auxiliary is a person with specific training in psychology and/or pedagogy who is contacted if a child is present at an arrest scene. The auxiliary looks after the child in question, and a law prescribes that this professional must be present with children up to the age of 14, during the interrogation phase and until they are placed in statutory care.

4. The research study

4.1 Methodology

The study involved new research which drew on quantitative data drawn from questionnaires devised specifically for the project and sent across the whole of Italy (endorsed by the Ministry of Justice) and qualitative data taken from drawings and work undertaken with children visiting their parents at the Spazio Giallo.¹⁴ This was in order to give a more complete picture of the situation in Italy with respect to children and imprisoned parents. This approach differed from that of the other countries in the study and some of the drawings and analysis are therefore included within this report as illustrations of their function in interpreting their meaning. For this reason, an additional Annex has also been included in this report, containing a detailed case study of one child's drawings and a subsequent analysis by the social worker who supported him¹⁵. In addition, Bambini has drawn on more than 10 years of its direct experience in this area, to give greater insight into the data collected.

4.2 Data collection

Permanent Watch is a section of Bambini which collects information on all case studies from the organisation's work in prison in recent years. This database contains records of case studies, reports of individual support sessions, rulings, decrees and interviews in Italian with imprisoned parents and children during the various stages of the criminal justice process: arrest, remand detention, execution of sentence, parole and release. The aim of this experimental archive is to record experiences and collect documentation on the application of new laws on alternative measures to custody and the judiciary's rulings/focus on issues related to children of imprisoned parents; and to

¹⁴ The social-educational children's facility which Bambini run daily at San Vittore Prison and Bollate Prison in Milan

¹⁵ See annex 6.

foster interagency partnerships and collaboration on behalf of this group of children. The following selection of imprisoned parents was taken from this database, drawing on Bambini case studies:

Records of the Bambini Permanent Watch:

- 200 imprisoned mothers met/referred, 80 of whom are Bambini case studies
- 500 imprisoned fathers met/referred, 200 of whom are Bambini case studies

In addition to the information from the Permanent Watch database, stakeholder interviews were carried out with prison officers and social services staff.

The focus of Bambini's practice and research was on children. Although Bambini is in daily direct contact with children of prisoners, ethical considerations required finding a medium for them to express their feelings and talk about their experiences without asking them direct questions. Drawing, an extraordinary tool for children to express themselves in ways that words often cannot, was the selected medium. At Bambini's *Spazio Giallo*, children waiting to see their imprisoned parent are prepared for the visit, and encouraged to engage in drawing.

As mentioned above, a detailed case study of one child's drawings and subsequent analysis for the purposes of the research is documented in annex 6. Below are some examples of how the children express powerful emotions by drawing vibrant, dynamic and sometimes disturbing images. This is frequently the kind of drawing which children, particularly boys, execute the first time they come to visit their imprisoned parent, sometimes just a few days after the arrest.



A giant flying dragon, by Leo, age 5



A shark threatening a jellyfish, by Paoletta, age 5



A big fish threatening a small goldfish, by Akram, age 5



An erupting volcano, by Miki, age 5

2009-2010 Pilot study groups

- A total of 20 fathers imprisoned at Bollate Prison completed questionnaires.
- A group of 18 imprisoned mothers worked during the entire year on analysis in Bambini's 'mediation for creating relational objects' workshops, which provide the opportunity for mothers to create objects-messages for their children and to exchange experience. The crafts become symbolic of the mother-child bond and help ease the pain of being separated from their children.

2010 Nationwide prison study

The questionnaires were sent to 213 prisons throughout Italy. Given Bambini's activities in the region, Lombardy was chosen as the focus for detailed analysis, with the aim of developing a pilot network consisting of best practice at a regional level.¹⁶ The research process involved close collaboration and cooperation with the national Ministry of Justice, national prison officials, regional prisons administration and prison staff (education staff, social workers and prison officers), which is described in detail in Annex 3 – the Italian Awareness-raising and Advocacy plan. The main stakeholders in the study were:

1. prison management representatives
2. prison social services (probation staff)
3. children's social services
4. prison officer representatives
5. state police and carabinieri

4.3 Questionnaire

In order to gather data concerning the number of children with imprisoned parents in Italy, we devised questionnaires featuring both open and closed questions. Drafted by the DIHR, the questionnaires were translated into Italian and the questions were adapted to the situation in Italy, factoring in the Italian prison rules and the relationships between prisoners and their families and children in Italy. The Directorate of the Lombardy Penitentiary Management was involved in this process to ensure that questions were as accurate and relevant as possible.

The questionnaire, which was sent with the request that in every prison someone would be responsible for distributing and collecting it, contained 44 questions, exploring the following topics:

- the application of standard practice with respect to the prisoner's parental status
- the physical conditions of the visits for children who enter prison to meet their parents
- the tasks and behaviour of staff (police officers and education staff) with respect to visits
- restrictions and permits
- the different forms of contact and maintenance of the relationship, in person and from a distance
- specific initiatives concerning the family
- collaboration between the prison and other local agencies with respect to the needs of prisoners and their children
- training needs.

It was sent to different staff groups working in the prison (education staff, prison officers, management). Not all prison staff members have direct contact with children but, for all who took part, the questionnaire served as an awareness-raising tool, focussing attention on the issue, for the first time for some prison staff members:

¹⁶ cf paragraph 6.1.2, In-depth research in Lombardy

The questionnaires seem very useful in that they will allow us in future to monitor improvements in parent-child relationships during and after imprisonment. (Education professional, Bari Prison, Puglia)

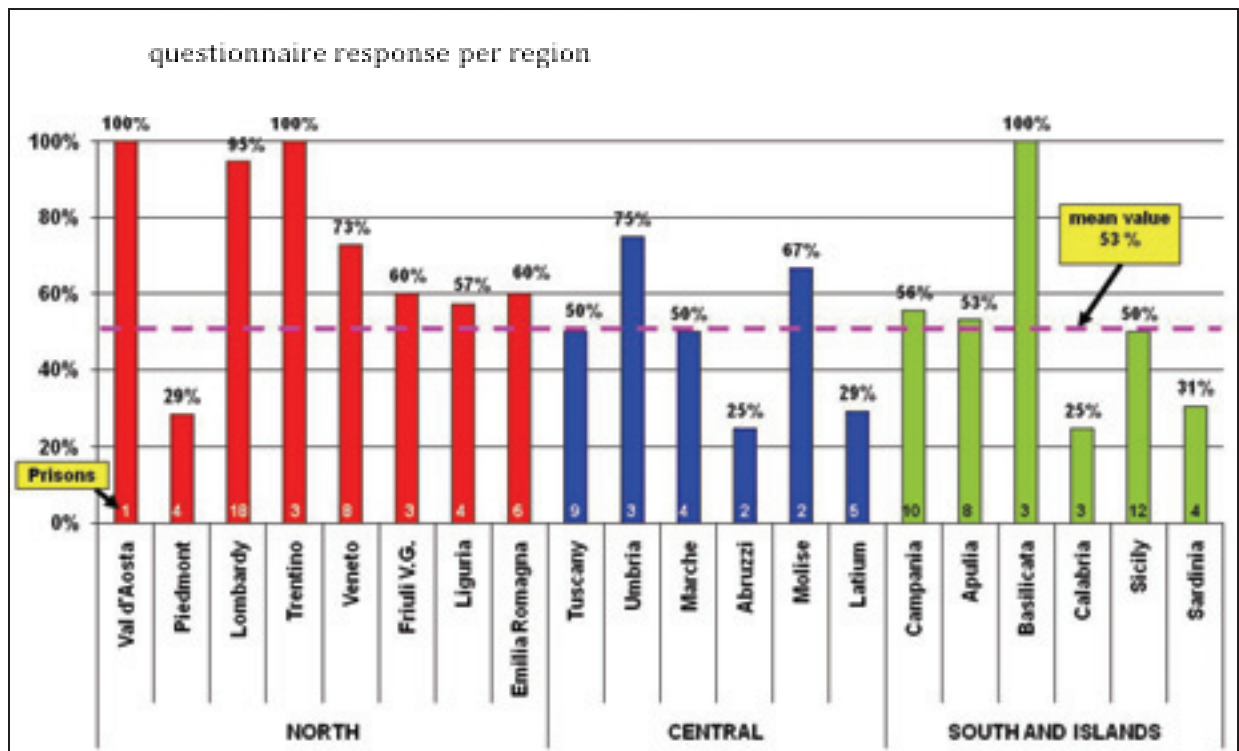
The questionnaires have to have impact and foster new work relationships, not only new knowledge. (Education professional, Isili Prison, Sardinia)

Very useful if the results of a careful evaluation of data gathered lead to concrete applications in reality, featuring binding innovations for every establishment and each profession with respect to specific professional skills. (Education professional, Bari Prison, Puglia)

Responses were received from every region in Italy with return rates varying, possibly due to the level of awareness within each prison to the needs of children of prisoners and the importance they attach to the issue. Of the 213 prisons, 112 responded, sending back 441 questionnaires. The following tables show the breakdown by region and profession.

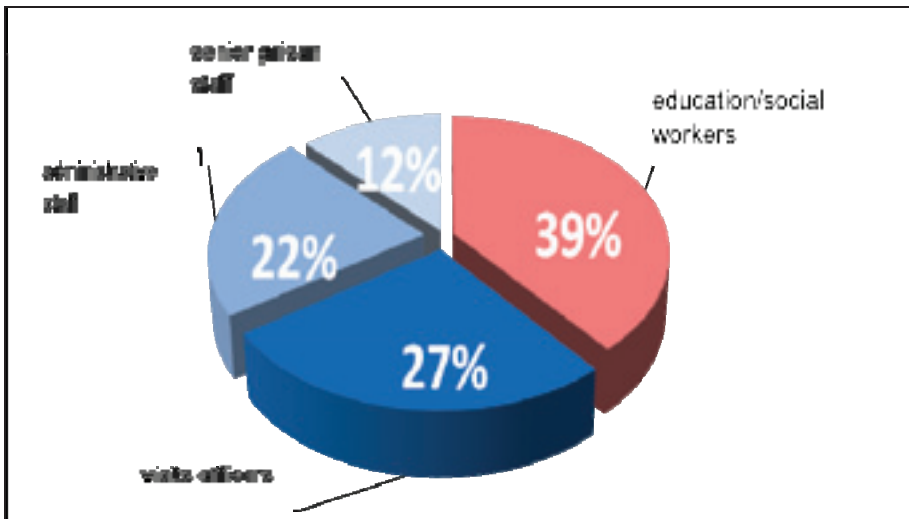
4.3.1 Response breakdown

Table 1: Completed questionnaires per region



In terms of geographic area, the national response rate was, on average, 53 per cent, a very positive result considering the degree of resistance commonly found among prison officers with respect to this type of investigation. The highest response rate was in the northeast, including Lombardy (67 per cent).

Table 2: Response rate according to staff category



*commander will be changed into top grade prison officer

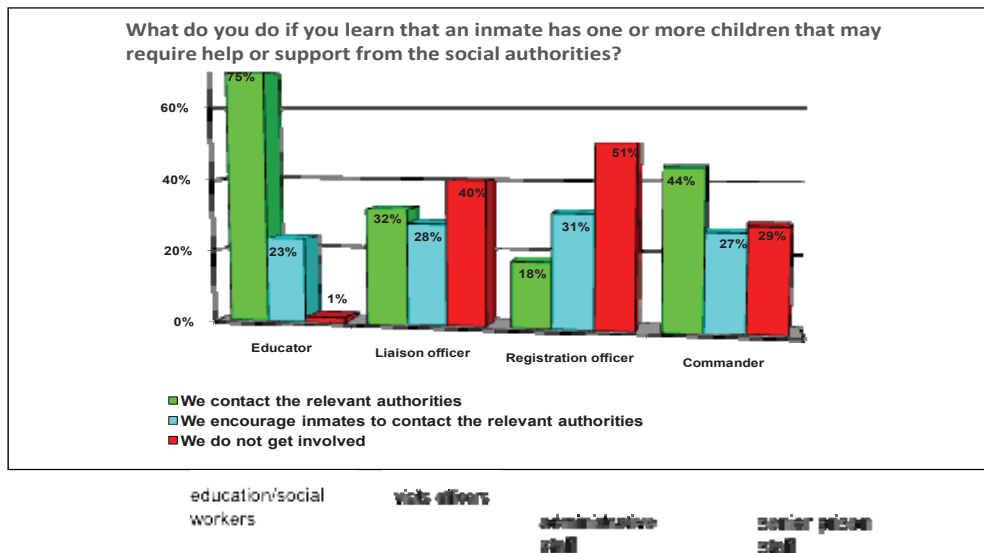
As can be seen from Table 2, the highest percentage of respondents was education/social workers.

In the following tables, responses are divided into four categories of staff but, in some cases, according to two categories: the education staff and prison officers (by equating the latter in the three sub-categories of prison officers).

4.3.2 Recording data

Although prison procedures provide an opportunity to inquire about parental status of prisoners, the research shows that in 18 per cent of the cases that question would not be asked; while 82 per cent said it is asked. In data published by the Ministry of Justice, the number of children of prisoners is indicated but with a note on the margin of error, evidently due to the 18 per cent 'not applicable', but also possibly attributable to 'no response' from the parent, who often hesitates to give this information because of widespread fear and mistrust vis-à-vis social services involvement.

Table 3: Response to prisoners with children



According to Table 3, 75 per cent of education staff contact the authorities compared with just 32 per cent of prison officers, 44 per cent of senior grade prison staff (Governor) and just 18 per cent of registration officers (on the prisoner's arrival). Registration officers, in particular (51 per cent), consider this outside of their jurisdiction; 23 per cent of education staff, 27 per cent of Governors, 28 per cent of liaison officers and 31 per cent of registration officers advise imprisoned parents to seek assistance from authorities themselves.

Whilst most staff felt the prison system had a level of responsibility to manage the impact of imprisonment on children and families, only about a third in all categories thought it was their personal responsibility to provide assistance to families.

4.3.3 Contact between prisoners and their children

Respondents were asked if they recorded whether or not prisoners receive visits from their children, with 93 per cent stating they did so. In response, most took some kind of follow-up action: 52 per cent of the staff members try to find out more about the situation; the remaining 41 per cent report it to the responsible unit or another staff member such as their supervisor, education or welfare staff or a psychologist. The research did not, however, identify what then occurs once the information is passed on.

4.3.4 Security measures

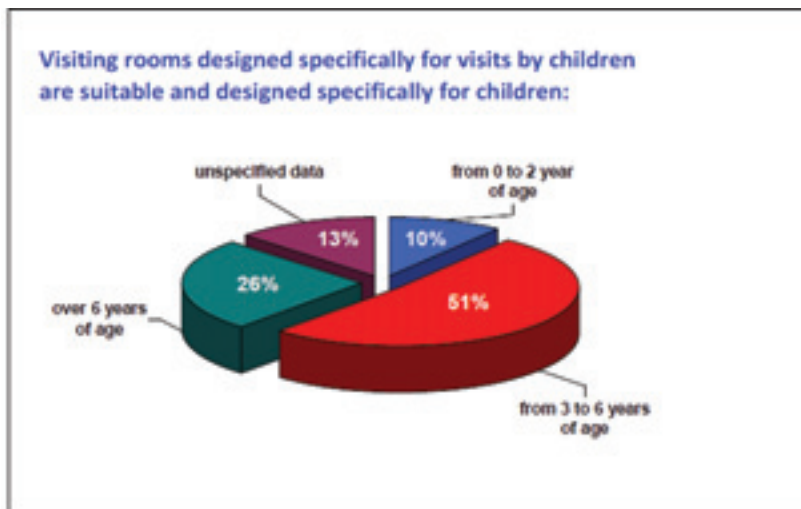
Intrusive searching of children when entering the prison is a procedure that is one of the most unpleasant, intrusive and possibly traumatising experiences for the child. From the research findings, 40 per cent of the staff stated they always conduct a search; 29 per cent use metal detectors; 20 per cent do a 'pat-down' search if considered necessary; 11 per cent also monitor when babies nappies are changed.

4.3.5 Visits

Family visits depend a great deal on when visiting times are scheduled; in the case of children of school age, it is important to make visits in the afternoon, after school hours (even into the evening) and on weekends. The survey reveals that 81 per cent of the prison visits are in the morning, 11 per cent in the afternoon and 8 per cent throughout the day.

Visits are granted between six and eight times per month in 73 per cent of prisons. Visits normally last one to two hours but there is in most cases the possibility of obtaining an extended visit with the child. The possibility of sharing a meal with the children is also granted in certain situations. And there are circumstances (such as solitary confinement) which prevent contact with children (except Art. 41bis of the Prison Rules for crimes of Mafia).

Table 4: child-friendly visiting areas



Whilst only a third of prisons reported have facilities designed specifically for children's visits, most provide some facilities for young children, such as toys, tables and chairs, and decorated walls. However, only 26 per cent provided anything specific for children over 6 years old.

4.3.6 Phone calls and correspondence

Other forms of important contact between prisoners and their children, such as phone calls and correspondence, are limited. Imprisoned parents are only allowed to call their children once a week in 93 per cent of the cases. Phone calls are allowed for duration of up to ten minutes and the time of the day is variable by prison; 39 per cent can call anytime throughout the day; 32 per cent from 6pm to 9pm; 23 per cent from 1pm to 6pm; and 6 per cent can call between 9am and 3p.m. It is possible to make a call to a mobile phone, but only 49 per cent of prisons are aware that this possibility is granted to the imprisoned parent. Imprisoned parents cannot receive calls in 84 per cent of cases.

Correspondence is another way to maintain contact, but difficult for parents who cannot afford to buy materials to write or mail a letter if it is not provided by the prison. In 47 per cent of the prisons, this material is always provided, but in 30 per cent of the prisons, only in certain situations; 23 per cent do not provide any. Email correspondence was not permitted.

4.4 In-depth regional research

An important element in the Italian prison research was a decision to choose Lombardy as the pilot region for more in-depth analysis. This was selected because:

- It is the region where Bambini has been active over the past ten years.
- It is representative of the national context in that all different types of prison (all-male, all-female, district, confinement, for others with children, psychiatric) are found here.
- The region has the maximum relative density of prisons (nine).

- It is the region where the issue of family and parental bonds in prison first became a focal issue.
- The region has developed an approach to prison which recognises human rights and children's rights (see *paragraph 6.1.2, In-depth research in Lombardy*).

Researchers visited each prison in Lombardy and rated the facilities available for children. The following gives an overview of available facilities and arrangements in the different prisons across the region.

4.5. Visits

4.5.1 Special child-friendly rooms

The vast majority of prisons in Lombardy have specially designated rooms for children, for either actual visits with imprisoned parents, or where children can wait prior to visits. These vary considerably in terms of quality and range, however, and include:

- basic rooms for visits (Brescia Verziano, Cremona, Lecco, Mantova, Monza)
- child-friendly spaces that have been colourfully painted and are equipped with toys, books and activities for children (Bergamo, Busto Arsizio, Brescia Canton Monbello, Pavia, Vigevano)
- more elaborate child-friendly visits facilities with age-specific areas (San Vittore) and sophisticated waiting rooms with NGO-run therapeutic services like the *Spazio Giallo* (San Vittore, Bollate); one prison, Bollate, also has a large child-friendly recreational visits room, and a 'resettlement room' – a small one-room 'flat' where the child can spend time engaging in everyday activities with the imprisoned parent for the day and no prison staff are present
- in some prisons, prisoners have made furniture, murals and provided other decorative features for visits rooms
- outdoor areas for visits between children and imprisoned parents (Bollate, Cremona, Monza, San Vittore). Bollate has a gazebo and tables and there are plans to involve staff from the horse-riding school to bring in horses for the children. There is also a service for the diffusion of music. Some prisons plan to make outdoor facilities more child-friendly, with a gazebo, tables and benches, toys, flowerpots and a fountain to make it more recreational (Cremona)
- some prisons have special parent-child schemes for overseeing visits (Busto Arsizio). Others provide theatre performances and other forms of entertainment for children (Brescia Canton Monbello, Brescia Verziano, Bollate). Como Prison's special scheme *Ridere per Vivere* (Laugh and Live) features clowns and performers to help reduce stress as children enter the prison
- Milan Opera and Varese Prisons have plans to develop child-friendly visits areas, whereas Brescia Verziano plans to construct a special entrance and a waiting room. The child-friendly rooms at Pavia were not being used at the time of the study, due to a lack of staff and concerns over security. Meetings between imprisoned parents and children take place in the magistrate's room at Sondrio Prison.

4.5.2 *Extended visits*

Extended visits on special occasions such as Father's Day, school holidays and Christmas play a key role in supporting family ties by providing opportunities for quality visits. In some prisons, prisoners contribute to the festivities, for example, by baking cakes. Many prisons say they are unable to organise special events due to lack of space. Those where they are available include Bollate, San Vittore, Brescia Verziano, Busto Arsizio, Como and Sondrio Prisons:

- At Bollate, in addition to longer visiting times (until 6pm, including Saturdays), special extended visits are organised, featuring entertainment for children.
- At San Vittore, prison staff do not wear uniforms during the special extended visits (for example, on Mother's Day, Christmas, etc.); special visits outside are held two Sundays per month here, and the number of Saturday visits (no school for children that day) has been increased.
- At Busto Arsizio, extended visits for Father's Day and other special events are organised at Busto Arsizio, which plans to recruit facilitators to be present at the prison every month.
- Brescia Verziano holds regular extended visits, many featuring theatre performances for children.
- Como Prison plans to launch special family day visits for holidays, Father's and Mother's Days and other key dates.

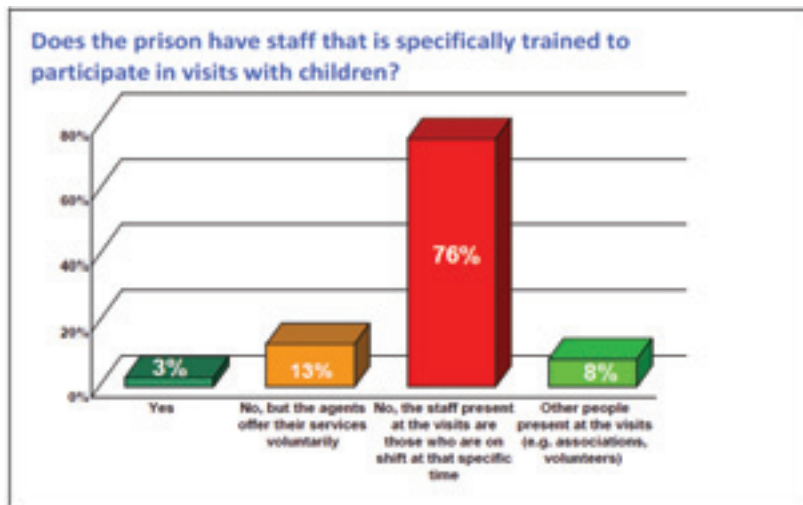
4.5.3 *Training for prison staff*

Prison staff are frequently not aware how small changes in their behaviour and attitude can impact on children. However, several prisons in Lombardy provide training for prison staff to raise awareness and introduce the child's perspective:

- Bergamo (a prison for juveniles), Vigevano and Mantova prisons run awareness-raising schemes for staff who come into contact with children and families, highlighting the importance of changing their behaviour in the presence of children.
- Mantova also places emphasis on making security procedures more child-friendly.
- Como includes awareness-raising programmes for prison officers as part of its Ridere per Vivere (Laugh and Live) scheme.

The national study also highlighted the issue of staff training:

Table 5: Specially trained prison staff



Most prisons do not have specialist staff trained to work on visits between prisoners and their children (76 per cent). On average, 78 per cent of the staff reported that they did not feel suitably trained to deal with prisoners' children. The responses highlight the need for training, yet also reveal the need to disseminate information more widely, given that the Ministry of Justice released guidelines in December 2009 on how to behave appropriately in front of the children and the family, and drew prison officers' attention to the importance of facilitating of parent-child relationships.¹⁷ Yet, only 34 per cent of respondents knew that guidelines existed for staff members on how to interact with children during visits.

4.5.4 Support schemes for imprisoned parents and families

There is a variety of support/education programmes for imprisoned parents and their families offered in the Lombardy prisons, including:

- crafts workshops for imprisoned parents (for example, Lecco Prison, where parents make objects that children use during visits);
- parenting support schemes, such as Mamme Dentro (Mothers Inside) at the mother-baby unit at Como Prison; Genitori Dentro (Parents in Prison), focusing on parenting support and conflict resolution, and support groups for imprisoned fathers run by Bambinisenzasbarre, both at Bollate; and the Spazio Giallo Bollate and San Vittore;
- at Milan Opera, a support project for families with children who are experiencing behavioural difficulties due to a parent's absence has been active for years; the project offers a physical space organised as a private home, as well as psychological support by experts in family dynamics and child psychology;
- Monza Prison strives to reinforce parenting through better-quality visits revolving around play for children and imprisoned parents;
- Sondrio Prison plans to introduce a series of sessions for prisoners to raise awareness and enable them to discuss their parental role.

¹⁷ Ministry of Justice Circular, DPP: PEA 16/2007: *Penitentiary treatment and parenthood—supporting the entry and stay of children visiting imprisoned parents*

4.5.5 Community programmes and interagency networks

Some family support schemes involve outreach to families in the community:

- Lodi Prison runs a parent project in partnership with the Province, Bambinisenzasbarre and other local groups. The scheme includes individual support sessions, musical and recreational events and the participation of families in community programmes, such as Puliamo la nostra terra (Keep Lodi Clean), a voluntary cleanup campaign.
- Brescia Canton Monbello Prison is looking to create an interagency framework for local services (social services, child welfare, judicial services, etc.) to improve the delivery of support for prisoners' families.
- San Vittore Prison and its education staff are actively networking with Milan municipal authorities to create a similar framework.

ICAM

Milan – Best practice in Lombardy Institute for ‘soft’ custody for mothers “Mariella Fracasso”, Milan, Italy, 2007/2010

The ICAM Project is a pilot project specifically for imprisoned mothers with children under the age of three. The programme requires active participation of the mothers, aimed at promoting and fostering personal responsibility through a constant process of autonomy and growth of the individual. At the time of the study, 106 mothers and 144 children were involved in the project. The objectives include: improving the mother-child relationship in a warm environment, based on the family lifestyle; including the other children living outside the prison if possible; stimulating the participation of children aged 0 to 3 years in educational activities for that age group; and preparing and accompanying the process of separation from the mother when the child turns three.

At ICAM the prison officers (penitentiary police) do not wear uniforms and play a fundamental role, not only in terms of security but also in treatment. Cooperation between penitentiary police officials and education professionals represents a particularly significant element and is important to the women, since they feel like they ‘are all going in the same direction’. The prison social services (UEPE) involved in ICAM provide support to the mothers during their prison stay and after being released from ICAM. The main offences committed by imprisoned mothers in the project are theft, assault, fraud, violation of anti-drug law violations and property crimes. These types of crimes result in short, repetitive stays. Most women entering prison with a child under the age of three come from Europe, with a significant majority being from the Traveller community (nomad).

* **UEPE**: *ufficio esecuzione penale esterna*

5. Conclusion

Until the 1990s, there were no laws in Italy concerning the rights of children and adolescents with imprisoned parents. Greater focus needs to be placed on the rights of these children and more done to implement the principles of the UN Convention on the Rights of the Child, to which Italy is a signatory. Yet, as stated in the introduction, the Italian legislative framework in criminal matters is one of the most developed in Europe with respect to the needs of children with imprisoned parents, particularly in terms of imprisoned mothers and primary carers and the recognition of the impact of maternal imprisonment on children. The 2001 Finocchiaro Law introducing the possibility of special house arrest for sentenced mothers with children up to the age of 10 has played a pivotal role in the overall framework of prison reform. The recognition of the importance of safeguarding family ties among imprisoned parents and their children was given new impetus with the 2009 Ministry of Justice circular¹⁸ instructing prison staff in all Italian prisons to pay specific attention to children visiting imprisoned parents and foster quality contact whenever possible.

Both initiatives are innovative in scope, yet both have limitations. The Finocchiaro Law has not been extensively applied. Many women spend long periods in pre-trial detention, but the law is applicable only to sentenced women, for example. Difficulties also exist in implementing the law, particularly for foreign national and Roma women who do not have a place to stay during house arrest, one of the conditions for eligibility being having a 'suitable house'. Future reform to modify the law and enhance eligibility is required.

With respect to the Justice Ministry circular, further efforts are needed to bring practice in line with these recommendations. Although the Italian prison service is attentive to the absence of contact between imprisoned parents and their children (82 per cent of prison staff, who responded to the research questionnaires of this study, always enquire if a prisoner has children, and 93 per cent note when there is no contact between imprisoned parents and their children), only 34 per cent of prisons in Italy have guidelines for staff on how to interact with children. Although staff are offered awareness-raising programmes in some of the prisons in the Lombardy region, levels of training among prison staff throughout Italy must be increased and guidelines for interaction with children need to be established.

Visits and communication

Italy has traditionally placed emphasis on the family. As early as 1975, the Prison Reform Law 354 highlighted the need for prison treatment to 'facilitate suitable contacts with the outside world and family relations' (Art. 15), also providing for the possibility of working outside the prison and returning at night (Art. 21). Some regulations are specifically designed to foster contact with children, such as the right of sentenced prisoners with children under the age of 10 to obtain additional visits and phone calls in addition to the guaranteed minimum. Parents in prison are also eligible for extended visits with their children in specially provided rooms and areas. Since April 2010, low- and medium-security prisoners have been able to call mobile phones, a decision which helps maximise opportunities for contact between prisoners and children, and improve the quality of contact. One obstacle to maintaining contact in Italy is that some

¹⁸ Ministry of Justice Circular, DPP: PEA 16/2007, 10 December 2009: *Penitentiary treatment and parenthood—supporting the entry and stay of children visiting imprisoned parents*

imprisoned mothers are reluctant to reveal that they have children, for fear of social services placing the child in care. If children are present at the arrest of a mother who is the sole primary carer, the child frequently is placed in emergency care if there are no relatives to call upon. It can take months for social services to contact imprisoned mothers, who have little or no information about the child's whereabouts during this period. Greater attention needs to be given to mothers during the phase of arrest in Italy.

Family-friendly initiatives

Researchers identified many examples of innovative family-friendly visits facilities in Italian prisons, particularly in the region of Lombardy, where most prisons organise special events for children and imprisoned parents to maximise quality contact. Child-centred initiatives include special child-friendly visits rooms, sometimes furnished with items produced by prisoners; extended visits in specially designed rooms, with prison officers dressed in civilian clothes in some prisons; parent support programmes; workshops in which parents can create objects for their children; awareness-raising activities for prison officers; outdoor visits areas and child play spaces; child-centred support services; and a highly innovative child-centred pilot project, the ICAM Project, which provides an alternative to traditional mother and baby units and is designed to provide support to develop family relationships. Many initiatives involved the collaboration of community social services, libraries, NGOs (such as Bambini) and companies. Greater efforts must be made to expand these types of family-friendly initiatives to prisons throughout Italy and to systemise them. In addition, visiting hours need to be more flexible for children. School-age children can visit parents only in afternoons after school hours; yet 81 per cent of prisons responding to the questionnaire made visit times available only in the mornings. Overall, the prison service needs to pay greater attention to the needs of children visiting imprisoned parents.

Chapter 7: The Polish case study

By Agnieszka Martynowicz with Kjersti Holden and Nicolas Gauders

1. Introduction

It is extremely difficult to estimate the number of children who are affected by parental imprisonment every year in Poland as no data is collected on a national scale. One of the indicators is provided by the number of prisoners who are obliged to pay family maintenance. The *Monthly Statistical Information* provided by the Department of Justice and the Prison Service Headquarters shows that, overall, in December 2010, 12,882 prisoners were subject to a court order requiring them to provide financial support to their families.¹ Under Polish law, the courts can order maintenance payments in a number of situations: to support children; to support parents or grandparents or to support a former spouse following divorce proceedings. It is, however, reasonable to assume that the vast majority of prisoners who are obliged to make maintenance payments would be financially supporting their children. It is also reasonable to assume that the number of children entitled to maintenance payments from their imprisoned parents is only a fraction of the overall number of those affected by parental imprisonment in a country with a general population of over 38 million (including over 7.5 million children).

The analysis of the law, undertaken for this report, shows that Poland has a reasonably progressive legal framework that places considerable focus on prisoners' family relationships and the support required to maintain those. This is particularly true in the case of sentenced prisoners who may avail of family visits, phone contact and day release, as well as structured temporary release, and a number of other opportunities to sustain contact with their children. In practice, however, both the quantity and the quality of the contact depend very much on individual prisons and the provision of facilities, and other support varies significantly between prisons.

On 31 January 2011, there were 82,794 people held in 156 prisons across the country; 2,654 prisoners were women.² Remand prisoners constituted 10.3 per cent of the overall population (13.4 per cent of women prisoners).³ The Prison Service in Poland employs nearly 30,000 staff; 27,500 of whom hold various prison officer grades.⁴ Due to a lack of available information, it is not possible to estimate how many other professionals from the police, social services or other organisations are involved in dealing with prisoners and their children on a daily basis.

¹ Ministerstwo Sprawiedliwosci/Centralny Zarzad Sluzby Wieziennej (2011) *Miesieczna informacja statystyczna styczen 2011* (Department of Justice/Prison Service Headquarters, *Monthly Statistical Information, January 2011*, available at: <http://sw.gov.pl/Data/Files/public/styczen-2011.pdf>)

² As above

³ As above

⁴ Ministerstwo Sprawiedliwosci/centralny Zarzad Sluzby Wieziennej (2010) *Roczna Informacja Statystyczna za rok 2009* (Department of Justice/Prison Service Headquarters, *Annual statistical information for 2009*. Available at: <http://sw.gov.pl/Data/Files/kunickim/statystyki/roczne/rok-2009.pdf>. The Polish Prison Service is a uniformed (and armed) service with police-like grades (and hierarchy). Around 8 per cent of prison officers are employed specifically to co-ordinate sentence programmes and rehabilitative activities (sentence management). The remaining officers are employed as security officers

In the context of the high number of people imprisoned in Poland, and the number and range of professionals whose work relates to prisoners and their children, the study reported in this chapter constitutes a small-scale research project. However, the consistent responses provided by the police, prison staff, social workers and prisoners themselves indicate that while there has been some progress made in supporting contact between prisoners and their children in a constructive way, there is still a long way to go before the best of international good practice is mainstreamed throughout the prisons and beyond.

2. Methodology

2.1 The legal framework

A detailed analysis of the legal framework governing the situation of prisoners and their children was undertaken in November and December 2010. This included the analysis of relevant provisions of the law of criminal procedure and prison rules, as well as the relevant provisions of family law and regulations governing the practice of the police and social services.

2.2 Literature review

A limited literature review was also conducted to contextualise the findings of the study. The researchers reviewed national statistics concerning the levels of imprisonment in Poland, national and international reports concerning prison conditions, and relevant case law.

2.3 Assessment of practice (Warsaw and the Mazowsze region)

The fieldwork planned for the assessment of practice in Poland at the start of 2010 was, unfortunately, faced with difficulties relating to the co-operation of the initial partner organisation. A need therefore arose to limit the scope of the study to a smaller, regional scale to meet the mid-January 2011 deadline set for the study. As the new project partners were based in Warsaw, the decision was taken in the second half of 2010 to focus on the situation in prisons in Warsaw and the Mazowsze region. While this limited the representativeness of the findings, it allowed for gaining considerable insight into the practice in a variety of prison establishments, including a number of remand prisons and prisons for sentenced men and women.

Fieldwork for the study included visits to the following prisons:

- AS Bialoleka (remand prison; male)
- AS Radom and OZ Pionki (remand prison; male)
- AS Sluzewiec (remand prison; male)
- AS Warsaw – Mokotow (remand prison; male)
- ZK Bialoleka (sentence prison; male)
- ZK Zytkowice (sentence prison; male)
- ZK Warsaw - Grochow (sentence prison; female and male)

Visits to the above prisons were organised mainly to observe the organisation of prison visits and to gain firsthand experience of the visiting facilities. Where possible, and appropriate, the project researcher approached prisoners and their families for information regarding their experiences of prison visits. Onsite interviews were also

conducted with prison governors (where available) and other staff who facilitated the visits. Additionally, nine questionnaires were completed by other prison staff.

Police

The project researcher organised a meeting with staff at the national Police Headquarters to discuss police arrest procedures when children are present and police training. Six questionnaires were completed by officers working in prevention teams in Warsaw.

Social Services

Eight questionnaires were completed by managers of the Social Work and Welfare Centres in Warsaw. These were later analysed together with 18 questionnaires provided by managers in other regions collected at the initial stage of the project (see below).

2.4 Additional information

In addition to the information collected in the course of the fieldwork in Warsaw and the Mazowsze Region, the study also draws upon data, albeit limited, gathered at the beginning of 2010 by the first project partner. This includes information collected in various regions in Poland from prison staff (six questionnaires in five prisons) and social workers (18 questionnaires in 18 Social Work and Welfare Centres). Information gathered during a visit by EUROCHIPS project staff to Poland in March 2010 is also included in the study where appropriate.

The March 2010 visit to Poland included a visit to AS Gdansk (remand prison), a visit to ZK Sztum (sentence prison) and a conversation with the Regional Director of the Prison Service (Dyrektor Okregowego Inspektoratu Sluzby Wieziennej) about the operation of prisons in the area; a visit to a police station in Torun to observe the operation of a so-called 'blue room' (a child-friendly facility designed for questioning of children by the police); a visit to AS Warszawa-Mokotow (remand prison); a visit to the Children's Ombudsman's office and visits to a number of non-governmental organisations (NGOs) working with prisoners and/or children in Poland.

3. Fundamental rights – the Polish Constitution and the status of international agreements in Polish law

3.1 The 1997 Constitution

The Polish Constitution of 1997 contains an extensive *Charter of Freedoms, Rights and Responsibilities* which consists of a number of regulations covering both civil and political rights, and social and economic rights.⁵ A number of rights protected by the Constitution are of relevance to this study.

Article 40 guarantees everyone the right to be free from torture, cruel, inhuman or degrading treatment or punishment. Additionally, Article 41(4) guarantees every person deprived of their liberty the right to humanitarian treatment while in detention.

⁵ Part II of the Constitution of Poland 1997, Articles 30 to 86 (Konstytucja Rzeczypospolitej Polskiej, Wolności, Prawa i Obowiązki Człowieka i Obywatela, Rozdział II)

Article 41(2) states that in cases where a person has been deprived of their liberty, their family (or any other person who is chosen by the detainee) should be informed without delay about the fact of their detention. Of additional relevance to this study is Article 47 which guarantees everyone the right to the protection of private and family life. Interestingly, the protection explicitly extends to the right to make free decisions about one's private and family life.

Article 48 of the Constitution guarantees the rights of parents to raise their children in accordance with their views and beliefs. The same Article also states that the child's upbringing should be appropriate to, and should consider, the stage of the child's development, but also include consideration of the child's own views and beliefs and respect for their freedom of conscience. Separately, and in the context of social and economic rights, the Constitution guarantees certain protections for families, in particular for families who are in a difficult 'economic and social' situation.⁶ While limited, the 1997 Constitution also guarantees the protection of the rights of children⁷ and states that in all decisions regarding the situation of a child, the state authorities as well as parents or carers are obliged to listen to, and consider, (as far as possible) the views of the child.

3.2 The status of international agreements in the Polish legal system

The Polish Parliament can only ratify international treaties which are compatible with the 1997 Constitution. Where such treaties are compatible, on the basis of the Constitution, Article 91 para 1, an international treaty signed and ratified by the Parliament, forms part of the national legal system and its implementation usually does not require separate legislation. Article 91, para 2 of the 1997 Constitution states that any international treaty ratified by the Polish authorities takes precedence over national law in situations where national legislation goes against what is required by the treaty.

On the basis of constitutional law, therefore, in Poland, the UN Convention on the Rights of the Child (CRC) forms part of the national legal framework and is directly enforceable through the courts. The same is true of other international treaties of relevance here, in particular the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the UN Covenant on Civil and Political Rights (ICCPR). While 'soft-law' instruments, such as the European Prison Rules 2006, do not have the same force in relation to direct justiciability, they are used by the courts (including the Constitutional Tribunal⁸) to define and/or interpret standards applicable to the situation of persons held in detention.

Unfortunately, at the time of ratification of the CRC, Poland made a reservation regarding the position of a child as a holder of rights by connecting the implementation of the provisions of the Convention to the respect for the rights of parents and carers, and to the 'Polish culture and traditions regarding the position of a child in the family and the society'. This, in practice, impacts negatively on the implementation of, in particular, the right to be heard under Article 12 of the CRC, as it is largely subsidiary to

⁶ As above Article 71

⁷ As above Article 72

⁸ Trybunał Konstytucyjny [The Constitutional Tribunal] is a special court dealing with questions regarding constitutionality of legal regulations in the national constitutional order. It is mandated to review the compatibility of Acts of Parliament and any subsidiary legislation with the 1997 Constitution and with international treaties as appropriate. The Tribunal can only be petitioned by certain public authorities (including the Civil Rights Ombudsman) or a group of members of Parliament

parental rights in respect of the child's upbringing.⁹ Despite repeated recommendations made to the Polish government by the UN Committee on the Rights of the Child, Poland has yet to withdraw the reservation.

4. The rights and practice at the time of arrest

4.1 Legal framework:

4.1.1 *The reasons for arrest and the powers to search persons and premises*

Arrest procedures are regulated in the main by Articles 219-221, 223 and Articles 243-248 of the Code of Criminal Procedure 1997 (Kodeks Postępowania Karnego, the Code of Procedure).

In accordance with Article 243 of the Code of Criminal Procedure, anyone who witnesses a crime being committed can stop a person if they are concerned that they will abscond or where the identity of the person cannot be immediately established.¹⁰ Anyone who stops a person suspected of committing a crime is obliged to inform the police without delay.¹¹

The police have the right to arrest a person on the basis of reasonable suspicion that a crime has been committed and when the police are of the view that the suspect:

1. will abscond or go into hiding;
2. that they will try to destroy evidence of the crime;
3. where the identity of the person suspected of committing a crime cannot be established or verified; or
4. when there are reasons to commence a simplified criminal procedure against the suspect.¹²

An arrest warrant can also be issued by a prosecutor if there is reasonable suspicion that the person suspected of committing an offence will not cooperate voluntarily with the police and/or the prosecutor or where the prosecutor is of the view that the person should be detained on remand.¹³ Where none of the above reasons for arrest exist in a particular case, the person suspected of committing an offence should be called to a police station to provide statements voluntarily.

Where a need exists to find a person suspected of committing an offence, or where the person does not present voluntarily for questioning (but their whereabouts are known), or where there is a need to secure evidence, the Prosecutor in the case (or, with the court's warrant, the police) is permitted to search premises and persons in such premises to effect arrest and/or secure evidence.¹⁴ A search warrant has to be shown

⁹ An example of such impact can be found in the regulations of Family Code (Kodeks Rodzinny i Opiekunczy) 1964 which under Article 95 para.2 states: 'A child who remains under parental supervision should obey his or her parents and in matters in which the child is legally authorised to make their own decisions, should listen and consider the opinions and directions expressed by the child's parents in the child's interest'

¹⁰ The Code of Criminal Procedure 1997 Article 243 para. 1 (Citizens' arrest)

¹¹ As above Article 243 para. 2

¹² As above Article 244 para. 1. Simplified procedures are used, for example, when there is no doubt as to the fact the person committed the crime (for instance, if someone was stopped while in the process of committing an offence)

¹³ As above Article 247

¹⁴ As above Article 219

to the person present on the premises and the person sought (if they are present).¹⁵ Searches of private homes are not normally permitted between 10pm and 6am¹⁶

While the Code of Criminal Procedure is silent on the issue of the rights of persons who witness a search and/or arrest, it states that searches should be conducted in a way that respects the dignity of persons who are present, and without causing unnecessary material losses or unnecessary inconvenience.¹⁷ In respect of searches conducted by the police, Article 14(3) of the Police Act 1990 is also of relevance. It requires all police officers to respect human dignity, and observe and protect human rights while exercising their functions/duties.¹⁸ The principles contained in the Police Code of Conduct 2003, which state that, in exercising their duties, police officers are required to consider the age of individuals present at the time of the arrest (or any other police action) and consider their needs at every stage of the proceedings, are also applicable here.¹⁹

4.1.2 The rights of those who have been arrested

The Code of Criminal Procedure requires that any person arrested is to be informed of their rights, including the right to have a lawyer present.²⁰ The Police are also obliged to immediately inform the Prosecutor of the fact of the arrest.²¹ In accordance with the Code of Criminal Procedure, the police do not have an obligation to automatically inform the suspect's family of the fact of the arrest. The Code requires, however, that information should be provided to the family, other persons named by the arrested person, the employer of the arrested person, etc., where the person arrested wishes for them to be informed.²² In any case, as described above, the person can invoke their constitutional right contained in Article 41(2) of the 1997 Constitution to have their family informed.

The maximum time of detention following arrest is 72 hours,²³ within which a decision has to be made by the court to release the person, to release them on bail or to remand them in custody.

4.1.3 Obligation to inform the authorities of the child's situation

The Family Code 1964 (Kodeks Rodzinny i Opiekunczy) places the responsibility on family courts and other public authorities to assist parents in cases where the state's help is needed to ensure that parental responsibility can be discharged in an appropriate manner.²⁴ In particular, parents have the right to petition the Family Court to arrange for temporary care for the child should they not be able to discharge their caring responsibilities. In such circumstances, the Family Court and any other public

¹⁵ As above Article 220. In exceptional circumstances, where the arrest warrant cannot be issued before the search commences, the legality of the search has to be confirmed by a court without delay. The person subject to search procedures has to be informed about the decision of the court within 7 days of the search taking place (Article 220 para 3 of the Code of Criminal Procedure 1997)

¹⁶ As above Article 221 para. 1

¹⁷ As above Article 227

¹⁸ Ustawa z dnia 6 kwietnia 1990r o Policji (Police Act 1990), Dz.U. 1990 Nr 30 poz.179

¹⁹ Zasady Etyki Zawodowej Policjanta 2003 (Police Code of Conduct 2003) (available at: http://www.policja.pl/ftp/prawo/zasady_etyki_zawodowej_policjanta.pdf). The Police Code of Conduct is not legally binding although it is in large measure based on the regulations of the Police Act 1990

²⁰ The Code of Criminal Procedure 1997 Article 244 para. 2

²¹ As above Article 244 para. 4

²² As above Article 245 para. 2 and Article 261 para.s 1 and 3

²³ As above Article 248

²⁴ The Family Code 1964 Article 100 para. 1

authority involved in the case are under an obligation to inform social services of the need to assist the child and the family.²⁵

4.2 The practice

The guidelines provided to the police in Poland are silent on the specifics of effecting arrest in the presence of children; the Police Handbook provided to the researchers refers only to the generic procedure applicable to all arrests. The generic procedure states that at the time of arrest, all police officers should provide their full name and rank to the person being arrested (non-uniformed officers have the obligation to show their police identification); check whether the suspect has a weapon or other dangerous objects and confiscate them as necessary; inform the suspect of the reasons for the arrest and take them to a police station as soon as possible. There are no further guidelines as to the practice of arrest. Police officers are, however, trained in dealing with children as part of the package of professional training delivered in the Police Training College.²⁶

Police officers interviewed for this study stated that, in practice, their behaviour at the scene will depend on their assessment of any individual situation which may include checking on the personal circumstances of any person suspected of committing an offence to anticipate the presence of children during arrest. The police officer in charge of conducting the arrest will then decide on the appropriate procedure. This may include, for example, the taking of children to a separate room in the house or apartment to make sure that they do not witness their parent being handcuffed. The general guidelines on police dealing with children will also apply to arrest situations. They incorporate the following principles:

1. Police officers should use such vocabulary as can easily be understood by the child and which is appropriate to his or her age.
2. Police officers should refrain from any actions which would be stressful for the child, for instance trying to rush the child.
3. Police officers should not display any behaviour that would be demeaning to the child.
4. If there is a need for the child to be questioned, such questioning should be conducted in a sensitive manner, and questions should be formulated in a simple way, avoiding any jargon, and providing descriptive explanations appropriate to the child's age if necessary.²⁷

Police officers interviewed as part of this study reported that in cases where children are present during arrest, they would be taken into a separate room so they do not directly witness the arrest. The same approach would apply to any adult witnesses present, except for situations where a search of the home is required. In this case, the adults present will be requested to witness the search in accordance with the search and arrest warrant.

When asked whether they viewed their training in handling arrest in the presence of children as sufficient, the police interviewees stated that they view their experience

²⁵ As above Article 100 para. 2

²⁶ Letter from the Police Headquarters, Training and Development Unit, 19.01.2011. The overall training in conducting arrests is scheduled for 30 hours. The letter from the Training and Development Unit stated that part of that training is preparing police staff to effect arrest in a variety of circumstances, including when children are present in the home/other location

²⁷ Łagoda, K. and Robert Czescik, R. (2002) *Vademecum interwencji policyjnych* (The Principles and Practice of Police Interventions) Szczytno: Wydawnictwo Szczytno, p. 85

rather than training as the most important factor in how they conduct arrests. They viewed the training as helpful, but stated that considering the very individualised nature of every arrest situation, they would most often apply their experience and skills acquired while on duty.

In cases where the police cannot immediately identify a person who can take custody of the children at the time of the arrest, police are obliged to take the child to the nearest emergency care centre (run by social services) or to the nearest children's home. They are also obliged to inform social services of the child's situation. A police officer interviewed in Torun stated that police would also immediately inform the Family Court of the child's situation to enable it to make a decision as soon as possible about the child's placement.

One social worker described her experience of dealing with situations when one or both parents have been arrested:

I always try to explain to the children what is going on. I try to answer the questions they are asking [in such situations], I also try to listen to them very carefully. Often social workers are the only people whom the children can trust and to whom they can express their doubts, fears. Sometimes there is a need to calm them down, talk to them but sometimes I just give them a hug and tell them that everything will be ok. (MOPS Luzino)

In practice, only one social worker who took part in this study stated that the Social Work and Welfare Centre is contacted occasionally by the police in such circumstances (on average, three times a year). Another stated that more often than not, it is the family's neighbours who get in touch with social services. In addition, all social workers who responded to the questionnaire thought that the cooperation with the police and social services was not satisfactory and that it could be improved. Due to the small scale of this study it is difficult to assess the reasons why there is such minimal contact between the police and social services in situations where a parent is arrested. It may be that in most situations the child/children are able to stay at home with the other parent or, indeed, another carer is found within the immediate family. One of the social workers who participated in the study reported that placement of children in state care was viewed as a measure of last resort and that all options of placing the child with the immediate or extended family are usually looked at first.

5. Pre-trial detention

5.1 The legal framework

5.1.1 Detention on remand as part of the criminal justice process

The Code of Criminal Procedure 1997 states that detention on remand should only be used in cases where it is necessary to ensure the proper conduct of criminal proceedings and when there is evidence to indicate strong likelihood of the person being convicted for the alleged offence.²⁸ Remand can be used during the investigative stage of the proceedings, as well as for the duration of the trial. It may only be used where no other measure, for example, release on bail, would be appropriate and

²⁸ The Code of Criminal Procedure 1997 Article 249 para. 1

sufficient in the circumstances of the case.²⁹ In particular, detention on remand can be used when:

1. there exists a reasonable suspicion that the person will abscond or go into hiding, and in particular where the person's identity cannot be established or verified or where they have no fixed abode in Poland; or
2. there exists a reasonable suspicion that the person will interfere with witnesses or in any other way may try to pervert the course of justice.³⁰

In exceptional circumstances, remand may also be used to prevent the person committing further serious crimes,³¹ as well as when the charges are of such gravity that they would justify long-term imprisonment on conviction.³² Remand is ordered by a court following a remand hearing.³³

When ordering detention on remand, the courts are required to determine the length of such detention and specify the date on which detention is to cease.³⁴ The courts may determine, in the course of criminal proceedings, that further detention is needed in a particular case for the duration of the trial³⁵ and extend the initial length of such a measure.³⁶ The courts are obliged to give reasons for such extension and, each time, give reasons for which other measures, such as release on bail or release under police supervision, are not appropriate or sufficient in a particular case.³⁷ Remand should also not be used where the the alleged offence is punishable with imprisonment of 12 months or less,³⁸ or where there are reasons to believe that the sentence will be a community-based disposal or that the sentence of imprisonment will be suspended on conviction.³⁹

While considering detention on remand, the courts may choose not to order such a measure in circumstances where the person's detention would have particularly serious consequences for the accused or their family.⁴⁰ For example, the court may consider that where a person is a sole carer of their children, or the only member of a family providing income, detention on remand would not be appropriate. Such exemption will not be granted, however, if the court is of the view that no other measure will ensure the appropriate conduct of criminal proceedings.

In accordance with Article 261 para 1 of the Code of Criminal Procedure, when ordering detention on remand, the courts are obliged to inform without delay the next-

²⁹ As above Article 257 para.1

³⁰ As above Article 258 para. 1

³¹ As above Article 249 para. 1 and Article 258 para. 3

³² As above Article 258 para. 2

³³ As above Article 249 para. 3 and Article 250 para. 1

³⁴ As above Article 251 para. 2

³⁵ As above Article 251 para. 2

³⁶ In any case, the length of detention between the time of the first decision to remand in custody and the sentence in the court of first instance should not be more than 24 months (Article 263 para. 3 of the Code of Criminal Procedure). In practice, however, Poland has been widely criticized for the systematic overuse of detention on remand for significantly longer periods of time (see for example *Kauczor v Poland, 2009* (Application no. 45219/06), a case of an individual held on remand for nearly eight years)

³⁷ The Code of Criminal Procedure 1997 Article 251 para. 3

³⁸ As above Article 259 para. 3

³⁹ As above Article 259 para. 2

⁴⁰ As above Article 259 para. 1

of-kin of the detained person. This can be a member of their family or any other person named by the accused.⁴¹ Additionally, the court is obliged:

1. to inform a family court of the fact of detention on remand in cases where there is a need to provide care for the children of the person so held;⁴²
2. to inform social services in cases where the person provided care to other members of their family (for instance, elderly parents); and
3. to make sure that the person's place of residence and their belongings are secure for the duration of detention on remand.⁴³

Every person detained on remand has to be informed of any decisions taken by the Family Court, social services or other authorities as a result of the court's actions listed above.⁴⁴

5.1.2 The rights of remand prisoners

Remand prisoners in Poland are held separately to sentenced prisoners, either in a separate unit of a larger prison or in a self-contained remand prison (Areszt Sledczy).

In accordance with Article 210 of the Code of Execution of Criminal Sentences 1997 (Kodeks Karny Wykonawczy), remand prisoners are to be informed of their rights on admission and provided with a copy of the relevant regulations of the Code. Remand prisoners have the right to inform their family of the details of the place of their detention⁴⁵ and may also choose to inform other persons or organisations, for example, a voluntary organisation providing legal advice.

In general, remand prisoners are supposed to have the same rights as sentenced prisoners held in closed prisons,⁴⁶ with exceptions introduced only where it is necessary to ensure the proper conduct of criminal proceedings; ensure the safety and security in the remand prison and to 'prevent further demoralisation' of remand prisoners.⁴⁷ Such definition of the exceptions and relevant regulations of the 1997 Code, however, allow for the introduction of significant restrictions on rights; the restrictions placed on remand prisoners' contact with the outside world, described below, being the best example.

Individuals held on remand are subject to restrictions regarding their correspondence and the use of telephone. On the basis of Article 217(a) of the Code, their letters are censored.⁴⁸ Remand prisoners are not allowed to use the telephone or any other means of telecommunication.⁴⁹ This, together with restrictions placed on visits to individuals held on remand, impacts significantly on the person's enjoyment of the right to family life.

⁴¹ As above Article 261 para. 2

⁴² Under Article 109 para. 2(5) of the Family and Care Code (Kodeks Rodzinny i Opiekunczy) 1964, a family court will decide immediately on the necessary course of action, including on the placement of a child/children with a foster family or in institutional care

⁴³ The Code of Criminal Procedure 1997 Article 262 para. 1

⁴⁴ As above Article 262 para. 2

⁴⁵ The Code of Execution of Criminal Sentences 1997 Article 211 para. 2

⁴⁶ As above Article 214 para. 1

⁴⁷ As above

⁴⁸ Article 217(b) of the the Code of Execution of Criminal Sentences 1997 provides for the exception of correspondence with defence lawyers, state authorities or international organisations such as the CPT.

⁴⁹ The Code of Execution of Criminal Sentences 1997 Article 217(c)

While Article 102(4) of the Code guarantees any prisoner on sentence the right to uphold family ties and receive visits from family and friends, prisoners on remand are required to ask for permission to receive visits.⁵⁰ Such permission is granted by the prosecutor or the court, depending on the stage of criminal justice process. If more than one state authority is involved in the individual case, permission of both needs to be sought every time a remand prisoner wants to receive a visit. Additionally, the visits so granted are normally provided as non-contact visits unless the court or the prosecutor in the case agrees to grant a contact visit.⁵¹

The way in which restrictions based on Article 217 of the Code of Execution of Criminal Sentences are implemented in practice by the Polish authorities has been reviewed in a number of cases brought to the European Court of Human Rights (EctHR) where the Court found a violation of Article 8 (the right to private and family life). These are described in more detail elsewhere in this report.⁵² Here, it is important to note that the regulations contained in Article 217 were also subject to a constitutional challenge brought to the Polish Constitutional Tribunal by the Civil Rights Ombudsman (Rzecznik Praw Obywatelskich; the Ombudsman) in 2009.

In this case, the Ombudsman questioned whether the law should contain an all-encompassing rule that all individuals subject to pre-trial detention should be required to ask for permission to be visited by members of their family, or whether the law should provide for general access to visits, and only limit the rights of those who pose the risk of perverting the course of justice. In the Ombudsman's view, the lack of clear description in the law of reasons for which a visit may be refused constituted unjustified interference in the right to family life under Article 31(3) of the Polish Constitution (defining restrictions on rights), and was incompatible with Article 8 of the ECHR. The Ombudsman also argued that the legal limitation on the right to visits is incompatible with Article 37(c) of the CRC in relation to children held on remand⁵³ and goes against the European Prison Rules which, subject to some exceptions, require that those on remand have the same rights to visits as those sentenced.

In the end, the Constitutional Tribunal looked at two aspects of the relevant provisions:

1. the fact that the law did not provide for precise reasons for which such permission may be refused, and therefore run the risk of arbitrariness in decision-making; and
2. the fact that the law did not provide for the right of appeal of the decision to refuse permission for a visit, either by the person on remand or their family or friends seeking to visit.

On both issues, the Tribunal held that the current provisions are not compatible with the 1997 Constitution and are not compatible with Article 8 of the ECHR. Additionally,

⁵⁰ The Code of Execution of Criminal Sentences 1997 Article 217 para. 1. Under Articles 212(a) and 212(b) of the Code, additional restrictions are placed on remand prisoners classified as highly dangerous. These include restrictions on visits, increased supervision on visits and no-contact visits

⁵¹ The Code of Execution of Criminal Sentences 1997 Article 217 paras. 2 and 3. Under Article 217 paras. 4 and 5 of the Code, in exceptional circumstances, for instance in child protection cases, the family (or anyone who visits) can request a non-contact visit

⁵² See Chapter 3: *The human rights framework*, in particular the cases of *Klamecki (No2) v Poland, 2003* and *Ferla v Poland, 2008*

⁵³ Article 37(c) of the UNCRC states: "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances [...]"

in relation to the lack of precision in describing the reasons for which a visit may be refused, the Tribunal held that the current legislation is not compatible with the provisions of the CRC. Unfortunately, while the Court considered the situation of children and their rights under the CRC while in detention, it has not looked at the child's right to family life from the perspective of children of imprisoned parents.

The judgment of the Constitutional Tribunal meant that the relevant regulations of the Code had to be amended but only in respect of defining situations in which the permission for a visit may be refused, and in respect of the right of appeal. Consequently, in November 2009, an Amendment Act was passed to introduce a number of additional regulations.⁵⁴ While the need to get permission was retained, remand prisoners now have the right to have at least one visit per month after such permission is granted. The amended Code states that permission may only be refused when the authorities have reasons to believe that the visit will be used by the prisoner to:

1. attempt to pervert the course of justice; or
2. to commit crime or attempt to incite the visitor to commit crime.⁵⁵

The new regulations also state that remand prisoners have the right to appeal to the court or to the Prosecutor on decisions refusing permission for visits.⁵⁶ Visitors who were refused permission to visit, including family members, also have the right of appeal.

Additionally, the new law clarified, at least to a certain extent, the situation of children seeking permission to visit remand prisoners. While the application for permission to visit has to be made by a parent or other legal guardian of children up to 18 years, the new regulations state that in situations where permission has not been granted to the parent or carer, the child's visit will still go ahead and will be facilitated by staff in the prison (this applies to children up to 15 years of age; older children will be permitted to visit alone).⁵⁷ Unfortunately, children, including older children, still cannot apply for visits in their own name.

5.2 The practice

5.2.1 Information about prisoners' children

Prison staff who responded to the survey consistently stated that all prisoners detained on remand are asked for information regarding their family situation and a note is made in the prisoner's file regarding:

1. whether they have any children;
2. whether any of the children were in their care prior to committal; and
3. whether the prisoner maintains contact with their children.

While little further information was provided by the staff surveyed, one prison officer described the procedure in the following way:

⁵⁴ Ustawa z dnia 5 listopada 2009r o zmianie ustawy – Kodeks karny, ustawy – Kodeks postępowania karnego, ustawy – Kodeks karny wykonawczy, ustawy – Kodeks karny skarbowy oraz niektórych innych ustaw (Dz. U. z 2009r, Nr 206, poz. 1589)

⁵⁵ The Code of Execution of Criminal Sentences 1997 amended by Article 217§1(b)

⁵⁶ As above amended by Article 217§1(c)

⁵⁷ As above amended by Articles 217§1(e) and 217§1(f)

We always make a note in the prisoner's file regarding their children. We note their full name and address. We also ask if the prisoner has contact with the kids and what is the nature of their relationship. (AS Sroda Wielkopolska)

Further, prison staff reported that in cases where the information provided on committal indicates that the prisoner's family may require assistance from social services, the staff will encourage the individual to make contact with social workers in the appropriate social work and welfare centre. In a smaller number of prisons, the staff stated that they would contact the Centre themselves with the prisoner's consent. In the case of one of the remand prisons (AS Sroda Wielkopolska), staff reported that they would assist prisoners in contacting appropriate institutions and/or individuals, including social services, should this be required to provide assistance to the prisoner's family. In the same prison, weekly advice clinics are also provided by social workers, probation officers and court-appointed guardians⁵⁸ to provide information if necessary.

In accordance with the law, prisoners should be informed about any decisions taken regarding the situation of any children who were in their care prior to detention on remand. While it is difficult to assess on the basis of the information provided during this study whether this happens in practice, one female prisoner in AS Gdansk reported that she has never been informed of what happened to her grandchildren of whom she was a sole carer at the time of her arrest. As may be expected, this has caused her a lot of distress as she was not sure of the whereabouts of the children and their situation.

5.2.2 Entitlement to visits

Despite the recent changes to the law regarding visits to remand prisoners, the fieldwork undertaken for this research showed that remand prisoners continue to face long periods of time when their contact with children and/or family members is significantly restricted or non-existent. For example, one of the interviewees in ZK Zytkowice (a prison accommodating sentenced prisoners) revealed that he has spent six months without seeing his partner or his two daughters. He stated that, when on remand, he had no indication at all about how long he would have to wait for his application to be considered. In a sense, he was looking forward to being sentenced and transferred to a committal prison in the hope that he would be able to see his children.

A prisoner interviewed in AS Radom (a remand prison) reported how he waited two years to be allowed to see his son after he was placed on remand. Another prisoner, in the same prison, described how not being allowed visits from his partner impacted their relationship and his relationship with his child. He recalled how he was arrested just before the birth of his son and placed on remand. Despite applying to be allowed visits from his family soon after his detention, he waited four months for permission to be granted by the Prosecutor. The interviewee explained that this time was extremely stressful for him. He stated that he wanted to be involved as a parent in his baby's life and wanted to see him grow, and was constantly worried about not getting the permission and not being able to see his son. This period was also very stressful for his

⁵⁸ In Poland, the courts can order supervision by a 'kurator' – a professional who is trained to provide supervision to those who are subject to community-based disposals; whose sentence has been suspended or who are subject to supervision following release from prison. In this sense, the 'kurator' plays a role similar to that of a probation officer in the UK for example. However, 'kurator' can also be appointed as a legal guardian of children in family-law cases or in situations where a child/children have come to the attention of Social Services for whatever reason, and to represent their interests. For ease of reference, we are referring to the latter as a "court-appointed guardian"

partner, and the prisoner explained that while the situation improved after the permission was finally granted, he could see that the relationship with his son's mother has changed significantly and that the period of enforced separation had a negative impact.

There was very little evidence in the fieldwork to show that the recent changes to the law have impacted positively on the situation of remand prisoners and their children. Only one of the prison staff who responded to the questionnaire survey stated that the new law gives prisoners more opportunities for visits from their children and that they are granted faster than previously.

As noted above, currently those prisoners who have been granted permission to receive visits, are entitled to at least one visit per month. In practice, prison staff surveyed in the course of this study reported that the frequency of visits will be decided upon by the investigating authorities. In some cases, prison staff reported that visits are most likely to take place every two weeks.

Prisoners may choose not to receive visits from their children, or such visits may not be possible for other reasons. In the course of the study, researchers asked prison staff about their experience of such situations and the reasons why prisoners may elect not to see their children when on remand. The reason proposed most often, to explain why prisoners choose not to receive visits from their children, was that prisoners do not want to put their children through the experience of coming to the prison to see them and such visits may be emotionally difficult for both prisoners and their children. The reasons for which visits may not be possible, other than the prisoner not wishing to receive them, included little or no contact between the prisoner and their children before or since detention on remand; the distance between the prison and the prisoner's family home (or children's home) and the lack of financial means at the family's disposal to be able to cover the cost of travel to the prison.

Some prison staff, social workers and prisoners also reported that often the other parent does not want to bring children to the prison or purposely obstructs contact with the imprisoned parent, even where the imprisoned parent has full parental rights. One prisoner in Gdansk reported that he had to get a court order for his children to be allowed to see him in prison. Another, in one of the remand prisons in Warsaw, recalled how the prison administration was supportive of him trying to keep in contact with his daughter, but his attempts to see her failed:

When the mother refused to bring our child to visit me in prison, the prison governor agreed to three one-day releases so I can see my 5-year-old daughter at home. The first time I was only able to see her because my Mum paid my former partner to be there. When I went out the second time, she took our daughter out of the city so I wasn't able to see her at all. After that, I just gave up and said to the governor that I am giving up the day release voluntarily. (AS Radom)⁵⁹

⁵⁹ This case illustrates the conflict that may arise between parents in relation to contact rights (or contact practice) when one of the parents is imprisoned. The contact entitlements often have to be decided by family courts in such circumstances. The Family Code 1964 regulates formal custody rights (parental rights) and in Article 107 states that in situations where parents who do not live together share parental rights, it is the Family Court who will make the decision about the way in which those rights are exercised (for example, the Court will decide which of the parents will have control over financial means that belong to the child). It is important to stress here that in accordance with the Family Code 1964, contact rights *are not dependent* on parental rights, that is, the parent who does not have formal custody of the child (parental rights) still has the right to contact the child (Article 113). The Family Court will intervene in cases where the parents cannot agree on contact arrangements. The Court may also intervene in cases where contact with one or both parents

5.2.3 Arrangements for security checks

Children visiting their parents in prison are subject to some of the general security checks, that is, they are asked to walk through a metal detector (for those children who are able to do so) and their belongings are scanned. Children are not generally subject to pat-down searches or any other individual search; however, prison staff reported that this may happen in cases where they have reasons to believe that the child has been asked to carry, or is involuntarily carrying, items such as illicit drugs. Additionally, staff in remand prisons reported that they would observe the changing of nappies during visits. While little additional information was available regarding the procedure for such 'observations', one prison officer in AS Elblag stated that one of the 'unwritten' rules during children's visits is that at no time would a prison officer touch a child or come into physical contact with a child. The child's parents would be asked to perform all the tasks requiring physical contact, such as changing, dressing or feeding.

The prevailing opinion of prison staff regarding children's experiences of security procedures was that children are not particularly worried about the checks and that they do not feel anxious. Only one prison officer thought that security checks are stressful for the majority of children visiting their parent in prison. In a limited number of cases, prison staff stated that while significant anxiety can be observed during the first visit, this appears to dissipate later on:

In general, one can observe the levels of stress diminishing with every consecutive visit. There are some children who appear not to experience any stress from the word go. Others clearly don't know what awaits them during the prison visit and they tend to hold on to their mothers throughout. (AS Sroda Wielkopolska)

While very few prison officers could recall any special measures taken to prevent stress for children, in one of the remand prisons a member of staff reported that security personnel try their best to reduce the stress of security checks:

All requests are made in a soft and friendly voice. Staff try to ensure that the atmosphere at security is friendly rather than oppressive. They try to explain all the procedures to minimise fear and stress. They show children what the equipment is for; they try to interest the kids in how it works. In effect, going through security becomes more like play as children become interested in all the lights and sounds that equipment such as a manual metal detector makes. (AS Sroda Wielkopolska)

5.2.4 General arrangements in visiting areas

All the remand prisons visited in the course of the fieldwork offered standardised visiting facilities with a number of tables and chairs set out for the use by prisoners and their families. All of them included a canteen where both prisoners and their visitors can purchase food and drink. In AS Grochow (remand prison), the visiting area was shared by female and male prisoners.

While visits normally last for an hour, prisoners can apply to the governor for the individual weekly or bi-weekly visits to be combined into longer single visits. Permission for longer visits will be granted, in particular, in circumstances where the family has to travel a considerable distance. All visits in the general areas are supervised and some staff reported that no physical contact is allowed between prisoners and their visitors.

is not in the best interests of the child, either by limiting contact to certain times, places, etc. (Article 113.2) or prohibiting contact all together (Article 113.3). The Court's decision may be changed should the circumstances change (Article 113.5)

In one of the prisons, staff stated that this includes contact with children, even during play.

On the other hand, two prisons offered special private rooms which could be used by prisoners and their families. This included the provision of rooms for conjugal visits between prisoners and their partners. Such rooms are not supervised, either in person or through the use of monitoring equipment. The use of private rooms is decided upon by the prison governor as part of the system of earned privileges.

In all the remand prisons for which information was available, the toilets in visiting areas were only available to visitors and staff. For security reasons, prisoners who wanted to use the toilet had to be escorted to the adjoining prison wings and were subject to searches on exit from, and re-entry to, the visiting area.⁶⁰ While no information was available from remand prisoners about the impact of such arrangements on the time which they can spend with their families, it is reasonable to assume that the impact is similar to that reported by sentenced prisoners (see next section), that is, that on occasions when they need to use toilet the amount of time they spend with visitors is significantly shorter.

5.2.5 Child-friendly facilities in visiting areas and children's experiences of visits

In the course of the fieldwork, one of the project researchers had an opportunity to look at the visiting facilities provided by the various prisons in Warsaw and the Mazowsze region. It became clear that the provision of child-friendly visiting areas is far from uniform, and often depends on the prison itself.

All remand prisons visited in Warsaw and the Mazowsze Region provided so-called 'children's corners' although their quality varied from prison to prison. For example, while AS Warszawa – Bialoleka is equipped with a special area with soft mattresses, small chairs and a good variety of toys, AS Warszawa-Sluzewiec has very limited facilities, with poor quality toys and poor choice of activities. In one case, a member of staff reported that if a child does not have any toys or drawing materials with them, staff would provide them with, in particular, pens and paper if that helps to occupy them during visits. Differences in provisions in prisons outside Warsaw were also evident from questionnaires completed by staff in other regions.

In addition, there does not appear to be a uniform practice in all remand prisons regarding children bringing their own toys and/or other items into the visiting areas. While in some prisons staff stated that no toys brought in would be allowed, in others staff reported that children would be allowed to bring in books and toys, as well as drawings they made for their parent. In one of the prisons a member of staff reported a flexible approach:

We have a special children's area where there are toys, paper and crayons but if a child wants to bring their own toy, a stuffed animal or something, we wouldn't create any difficulties.

There appeared to be some recognition that the current provision of child-friendly facilities is far from ideal but that there are limited possibilities to offer other solutions. A member of staff in one of the remand prisons in Warsaw stated:

⁶⁰ In some of the remand prisons that provide facilities for conjugal visits, a separate bathroom is provided for the use by both the prisoner and their partner

There are no good places in prison [where a visit by children could be organised]; a place of detention will always be inappropriate for this. The only thing you can do is to make what we have a bit more friendly – provide toys, paint the walls in cheerful colours... (remand prison; name of the facility not provided)

None of the prisons from which information was obtained had specially trained staff available to facilitate visits by children; in one of the remand prisons the staff reported that visits are usually attended by staff with an educational or psychology training background. In one other facility there was a psychologist on site who could be called to assist if such a need arose during a visit or after.

While there was no opportunity in the course of the fieldwork to obtain the views of children or their parents regarding the children's experiences of prison visits, the prison staff expressed the view that, in the main, children are very glad to have visited their parent in prison. However, staff were also aware that the experience was very dependent on the relationship between the prisoner and their child, and the level of contact prisoners had with their children. Prison staff also observed that first visits often cause children some anxiety, but this usually dissipates with any consecutive visits. One member of staff stated that children are most upset when the visit ends and they have to part with their imprisoned parent.

5.2.6 Other contact between prisoners and their children

As stated earlier, the possibilities of contact between remand prisoners and their families are extremely limited. While they can keep in touch through written correspondence, restrictions are placed on phone contact or the use of any other means of communication. Interestingly, while the legal regulations state that phone contact is not permitted, the evidence collected during the fieldwork indicates that there are circumstances in which remand prisoners are allowed to get in touch with their children (and the other parent or carer). In most cases this will be when children are at risk, are ill or for any other reason that immediate contact is in the best interests of the child. A number of staff mentioned, however, that the investigating authorities may also decide to allow a more frequent contact.

5.2.7 Parenting 'on the outside'

While this study focuses mainly on the families' and prisoners' experiences of maintaining contact between children and the imprisoned parent, it is important to note that the consequences of imprisonment on remand (and indeed on sentence) for family relationships stretch well beyond the prison walls. As one of the senior social workers responding to the survey stated, in their experience the most important thing in situations when one of the parents is arrested or placed on remand is the provision of support to the parent who remains with the children, and the children themselves:

In my opinion, the psychological support for the parent who suddenly becomes the sole carer of the children is vital. [Also important] are simple conversations and, where needed, provision of therapeutic support to the children and particularly older children who, understanding what is happening, feel inferior to their peers; they also very often feel like they have to keep [the fact that their Dad is in prison] secret. [...] Very often the children don't have anyone to share their feelings or concerns with. The parent who remains in the family is often deeply involved in the criminal case and its progress, and often does not notice the needs of the children and help to address their feeling of a sudden loss of safety and security [in the family].

The survey of senior social workers indicated that, regardless of the region of Poland and regardless of whether the social work and welfare centres are in urban or rural areas, prisoners' families make up no more than 1-2 per cent of the centres' clients. For a variety of reasons, not all families of prisoners will come to the attention of the authorities, including to the attention of social work and welfare centres. Neither will all of the families who do use the assistance disclose that they are affected by parental imprisonment. Still, even with those provisos, the numbers of those accessing welfare assistance appears to be very low.

Those families who do access help do so on rare occasions, mainly contacting the centres not more than once a month to arrange financial and/or material assistance. While most of the centres offer other support, such as access to psychologists, addiction counsellors and to legal advice, families appear to be accessing such support very rarely or not at all. One reason for this may be that while, in the opinion of social workers, families think that the centres can help them effectively, they are also concerned that making contact with the centres will result in increased control by the state of the families' lives.

The social workers surveyed were of the view that two things would improve the provision of assistance to prisoners' families, namely, better communication with the families themselves, including better information about what kind of support is available and improved cooperation with the prisons. While prison staff surveyed stated almost unanimously that cooperation with the social work and welfare centres was good or very good, social workers mostly stated that it was poor and should be improved. In particular, social workers believed that there was very limited communication between the prisons and the centres. As one respondent stated:

Prisons should inform us regularly that someone from our region has been committed to prison and not just let us know that they have just left the prison [and need assistance]. Even that doesn't happen in every case. (GOPS Lisewo)

6. Imprisonment on sentence

6.1 Legal framework

Sentenced prisoners in Poland are held in closed, semi-open or open prisons, depending on the nature of the offence and the length of sentence, as well as security classification. The legal situation of sentenced prisoners in Poland differs significantly from those held on remand.

Encouraging and developing family relationships is stated as one of the means of achieving the aims of imprisonment that is the development of socially acceptable behaviour and promoting desistance.⁶¹ In line with this, Article 102(2) of the Code of Execution of Criminal Sentences 1997 guarantees all sentenced prisoners the right to keep in contact with their family and other persons with whom they have close relationships. The prison authorities are obliged to support such contact by the provision of visits, provision of materials for written correspondence, and the use of telephone or other means of telecommunication.⁶²

⁶¹ The Code of Execution of Criminal Sentences 1997 Article 67

⁶² As above Article 105 para. 1. Under Article 15 para. 3 of the Code, the prison authorities may restrict the way in which visits take place (for example, decide on no-contact visits) or the way in which correspondence is handled depending on the type of the prison and security classification of an individual prisoner.

Additionally, the Code provides a number of specific regulations regarding prisoners who have parental responsibilities. Article 87a concerns the situation of prisoners who care for children under 15 years of age. The Code states that when depriving a parent of such a child of their liberty, the prison authorities should consider the need to initiate, develop and maintain the emotional ties between the prisoner and their child; the need for the prisoner to support the child financially and – if the child remains in the care of the state due to the fact of parental imprisonment or for any other reason – the authorities should consider the need for cooperation between the prisoner and the institutions of state care.⁶³ The Code also states that if a child is in the care of the state, the prisoner should, where possible, be placed in a prison closest to the child's place of residence.⁶⁴

6.1.1 Contact with families

The entitlement to visits differs according to the type of prison:

1. In closed prisons, sentenced prisoners are entitled to two visits per month, each lasting up to 60 minutes.⁶⁵ The prisoner can ask that those are combined on one day into one visit lasting two hours.
2. In semi-open prisons, prisoners are entitled to three visits, each lasting up to 60 minutes, a month.⁶⁶ Again, those can be combined into longer visits if the prisoner so requests.
3. In open prisons there is no limitation on the number of visits per month,⁶⁷ but only one visit will be permitted each day. Each visit lasts up to 60 minutes.⁶⁸

Prisoners who have custody of children under the age of 15 have the right to additional visits attended by those children.⁶⁹ This usually means one extra visit a month.

Ordinarily, family visits will be restricted to two adults at any given visit, while the number of children able to visit at the same time will not be restricted.⁷⁰ Children under 15 years of age have to be accompanied by an adult.⁷¹ While the visits are supervised, the prisoner and their family should be able to make physical contact and be provided with a separate space in the visiting area.⁷² Prisoners and their families can consume food and drinks during visits, providing that those are bought in the prison tuck-shop.⁷³

⁶³ As above Article 87(a) para. 1

⁶⁴ As above Article 87(a) para 2. While under Polish law there is no formal general right for prisoners to be placed in a prison close to their family home, this would be considered in practice

⁶⁵ As above Article 90(6)

⁶⁶ As above Article 91(8)

⁶⁷ As above Article 92(10)

⁶⁸ Restrictions on the number of visits and regulations concerning supervision of visits by prison officers (described further in the section) do not apply to prisoners under 18 years of age in respect of their contact with legal representatives and to foreign national prisoners in respect of their contact with representatives of diplomatic authorities (Article 105a para.9 of the Code). In general, the entitlement to visits outlined in this section concerns only visits from family and friends ('professional' visits, that is, visits by legal representatives, are treated separately)

⁶⁹ The Code of Execution of Criminal Sentences 1997 Article 105a para. 3

⁷⁰ As above Article 105a para. 2

⁷¹ As above

⁷² As above Article 105a para. 5. Under Article 143 para.1(6) of the Code, closed, or no-contact, visits can be decided on by the prison authorities as a punishment for disciplinary offences

⁷³ As above Article 105a para. 6. The Code also lists a number of "earned privileges" for "good behaviour" during sentence (Article 138 para1). Amongst those are: extended visits; unsupervised visits in the prison's

Sentenced prisoners have access to public phones in the prison and where a prisoner does not have the financial means to pay for their own phone card, the prison authorities may permit the use of other phones in the prison (for instance, in the offices), with the cost of the call charged to the person receiving it or to the prisoner himself.⁷⁴

6.1.2 Day releases and prison leave

Prisoners held in semi-open and open prisons can apply for prison leave (day releases) in the course of their sentence. In semi-open prisons, prisoners can use the leave no more than once in every two months and for no more than 14 days in any 12 months. In open prisons, day release may be granted once a month and for no more than 28 days in every 12 months.⁷⁵ Prisoners will only be entitled to prison leave after serving a specified part of their sentence.⁷⁶ Prison leave may be granted on application from the prisoner as well as by a governor on his or her own initiative, and as part of the earned privileges scheme.⁷⁷ Governors can also grant leave of up to five days in circumstances such as family emergency.⁷⁸ If necessary, the prisoner may be accompanied by a prison officer or other person during such leave.

6.1.3 Women prisoners

In Poland, women prisoners are placed in semi-open prisons, unless the seriousness of the offence and/or security reasons justify imprisonment in a higher security facility. They are held separately from men, although in some instances this will mean separate units/houses on shared sites rather than discrete women's prisons.

Specific regulations concern the situation of women prisoners who are, or are soon to be, mothers. Article 87 paragraph 4 of the Code of Execution of Criminal Sentences states that women prisoners who care for babies and toddlers should ordinarily be placed in designated Mother and Child Units.⁷⁹ Children whose mothers so wish can stay in such Units until they are 3 years of age, unless it is in the child's best interest to stay in the Unit for longer or to be moved earlier to live with another carer. Article 87 paragraph 3 states that prisoners who are pregnant or who are breastfeeding are to be provided with specialist care regardless of the type of prison they are held in at the time.

One of the two existing Mother and Child Units is in the Grudziadz Women's Prison (Zaklad Karny Nr 1 Grudziadz). There, women prisoners who are mothers can stay

visiting area; unsupervised visits in a room separate from the visiting area and visits to relatives outside of the prison for a period of time not exceeding 30 hours. In cases where it is justified by family circumstances in particular, those additional visiting arrangements may be granted to a prisoner outside of the "earned privileges" scheme (Article 141 para.1 of the Code)

⁷⁴ The Code of Execution of Criminal Sentences 1997 Article 105b para.s 1 and 2

⁷⁵ As above Articles 91 and 92 respectively

⁷⁶ Different rules apply to different sentences, with the most general rule being that the prisoner must have served at least half of the time after which he or she may be considered for release on license

⁷⁷ The Code of Execution of Criminal Sentences 1997 Article 138

⁷⁸ The Code of Execution of Criminal Sentences 1997 Article 141(a) para. 1. This kind of leave would most often be granted as compassionate leave, for example, so the prisoner can take part in a funeral. The Code, however, does not specify the 'special circumstances' so it could also be used for other family emergencies.

⁷⁹ Polish law allows for a deferral of the execution of sentence for a period of up to a year when, for example, an immediate imprisonment of a family member would have serious consequences for other members of the family (Article 151 para.1 of the Code). While important for both male and female prisoners, the possibility of deferral is particularly important for women who are pregnant (when imprisonment can be deferred until the end of pregnancy) or women with small babies (where imprisonment can be deferred for up to three years after the birth of the child) (Article 151 para. 3 of the Code)

with their children, regardless of the nature of the mother's offence and security classification.⁸⁰ The Mother and Child Unit provides specialised healthcare, including a small maternity ward so women can give birth in the prison, assisted by healthcare professionals, including midwives and nurses, neonatal specialists, gynaecologists, anaesthetists, etc. The healthcare unit is organised in a way that allows doctors and nursing staff to react to crisis situations, for instance, if the baby is born addicted to drugs.⁸¹

While the women have to share rooms in the Unit (all of the bedrooms contain three beds for mums and three cots for children), the building itself looks more like a block of flats, and the bedrooms have large balconies which can be accessed by prisoners. The unit is designed in a way that women can take responsibility for their daily tasks – they have access to the kitchen, laundry rooms, etc. Bathrooms are child-friendly and include facilities for newborns and infants. Staff wear civilian clothing and can, with the mother's permission, take the children for trips to the shops, playgrounds outside of the prison, etc. (the prison is located in the city centre).⁸²

After a visit to Poland in 1996, the European Committee for the Prevention of Torture described the Unit in the following way:

*The Mother-and-Child Unit was intended for women in advanced pregnancy and mothers with children of up to 3 years of age. At the time of the visit, the unit was holding 14 children, 11 mothers and 6 pregnant women. The living accommodation for mothers with children consisted of five rooms, each of them being designed for triple occupancy. The rooms were spacious, clean, enjoyed a profusion of natural light and had access to a balcony. Further, there were two good-sized playrooms containing a variety of toys, as well as a small garden used as a playground. The unit also had its own kitchen in the basement of the block. To sum up, the Mother-and-Child Unit was a quite impressive facility.*⁸³

6.2 The practice

6.2.1 Location of prisoners close to their family

The Code of the Execution of Criminal Sentences is silent on the issue of placement of prisoners in facilities close to their family.⁸⁴ While the prison authorities aim to place sentenced prisoners (and indeed remand prisoners) reasonably close to their home, in practice the placement in a particular prison will depend on the number of spaces available. If a place is not available in the closest prison, the person will be committed to a prison in the same region of the country.⁸⁵ Considering the size of the country, however, even placement in the nearest prison may mean that families travel from afar

⁸⁰ Szamocka, M. (2010) "Urodzić i wychować dziecko w więzieniu?" in *Poradnik Domowy* (09.11.2010).

Available at: http://kobieta.gazeta.pl/poradnik-domowy/1.63125.8540149.Urodzic_i_wychowywac_dziecko_w_wiezieniu.html

⁸¹ As above

⁸² As above

⁸³ The European Committee for the Prevention of Torture (CPT) (1998) *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 12 July 1996*, CPT/Inf (98)13 para. 90

⁸⁴ The only exception, mentioned earlier in the chapter, being the situation when the prisoner's child is placed in State care in which case the law states the person should be placed in a prison closest to the child's place of residence

⁸⁵ The Prison Service in Poland is organised on a regional basis, with the regions having their own headquarters (accountable to the Prison Service HQ in Warsaw and ultimately to the Department of Justice) and a number of facilities under their control. An interactive map of the regions is available at: <http://www.sw.gov.pl/pl/>

to visit prisoners. Indeed, the distance between the home and the prison, as well as the cost of travel is quoted by prisoners as one of the reasons for which their families are unable to visit, or do not visit frequently. This is one of the reasons for which the legal regulations allow for combining of visits. All prison officers surveyed reported that both remand prisons and sentence prisons approach visiting in a flexible manner, combining visits into longer ones if the prisoner so wishes.

6.2.2 Information about prisoners' children

As with remand prisons, staff in facilities for sentenced prisoners reported that information about the prisoner's family situation is always collected on committal and recorded in the prisoner's file. If the information indicates that there may be a need for children or the family to be assessed for support by the social work and welfare centres, prisoners would be encouraged to get in touch with the relevant centre. No prison staff reported that they would facilitate such contact. This would tie in with the experience of the majority of social workers who responded to the survey and stated that their contact with prisons is rare and unsatisfactory.

6.2.3 Arrangements for security checks and general visiting arrangements

The arrangements for security checks in facilities for sentenced prisoners did not differ from those in remand prisons, although a member of staff in one of the prisons reported that children are treated as 'privileged' visitors and are not subject to search procedures. In two prisons, staff reported that they try to make security checks look more like 'play and fun' where younger children are involved.

The interviews with prison staff revealed that there are no specific procedures for dealing with children who visit their parents, but that prison officers use their skills and judgment when facilitating such visits. Prison officers stated that they would make an effort to make children comfortable during visits, in particular, where the facilities are not sufficient. In one of the prisons, a member of staff stated that they would let children 'run freely' in the visiting area for them not to feel constrained. In some prisons, such as ZK Warszawa – Bialoleka, efforts have also been made by the prison administration to raise awareness among staff to improve their approach to children who visit their imprisoned parents.

There was no mention of specially trained staff being available to supervise visits in any of the prisons.

CASE STUDY – ZK Zytkowice

Visiting

The waiting room for visitors is small (around 10m²), with no chairs, tables or vending machines. One of the visitors interviewed reported that when a large number of visitors have to wait to be allowed into the visiting area, they often have to wait outside which, as she said, is extremely unpleasant in winter or when it rains (visitor, 32 years old, female). There are no seats available outside and visitors sometimes use their cars to sit in and wait until being called in.

Visitors to the prison are subject to a search procedure, including walking through a metal detector and placing their belongings to be screened in an X-ray machine. Children are never subject to body-searches and if the need arises to remove any items from the child and screen them, the child may be asked to give the items to a prison officer or the parent/carer will be asked to do so. The visitors then go through

one set of security doors to enter the visiting area as the area itself is located close to the main entrance to the prison.

The visiting area is equipped with tables and chairs and includes a small area for children which, at the time of the visit by the project researcher, included two child-sized chairs. There are some toys, crayons and scrapbooks available in the children's corner. Visitors and prisoners can buy food and drink in the prison cafeteria to be consumed during the visit or taken by the prisoner to their cell after the visit.

Normally, a visit lasts up to an hour although prisoners can ask for their monthly visits (of which there are three) to be combined into one or two longer ones, particularly if the family travels from afar. The prisoners interviewed in the course of the fieldwork noted, however, that different factors such as security can impact on the length of time they have with their families. One prisoner reported that on days when there are significant numbers of visitors, security checks can be slow (Prisoner X, 25 years old, male) and the time it takes for the prison staff to check prisoners 'eats into' the time of the visit. He also remarked that, as prisoners are not allowed to use staff/visitors' toilets in the visiting area and need to go through security checks to go to the toilet on the prison wings and to come back, it can take up to 25 minutes for any prisoner to be able to use the toilet during a visit, again impacting negatively on the length of time which prisoners can spend with their visitors. The interviewee stated that now, since he's experienced such delays, he forces himself 'to use a bathroom before visiting time'.

In addition to the general visiting area, the prison also provides two private rooms where visits are not subject to staff supervision, neither in person nor through the use of recording audio-visual equipment. The use of the rooms is subject to permission from the governor and forms part of the system of earned privileges. As they are not supervised, physical contact is allowed in the private rooms. One of the private rooms is designed for family visits, equipped with table and chairs, and children can bring toys from the general visiting area to use in the room. The second room is designed mainly for conjugal visits.

Telephone contact with families

All prisoners can buy pre-paid phone cards in the prison's tuck-shop and access to phones is provided 24 hours a day. However, since the prison experienced conflicts between prisoners in relation to the use of public phones, the prison's administration limits the time spent on calls to 10 minutes per day per prisoner. Phone calls are not recorded.

The prison's administration facilitates access to phone calls to children in cases when there is a need for an immediate contact, for example, if the child is ill. Unfortunately, the prison does not provide facilities for children to be able to ring into the prison to talk to their parent. They may, however, contact the prison's education staff or prison psychologists if they wish.

6.2.4 Child-friendly facilities

There was very little information available from the fieldwork regarding provision of child-friendly facilities in prisons, but what data is available indicates that the approach in different prisons varies significantly. In one of the prisons, ZK Wolow, there was no special room for family visits, or even a special child-friendly area in the general visiting room and toys were not provided. On the other end of the spectrum were prisons, such as ZK Goleniow, where a special family room was available which was separate from the general visiting area and to which children could bring their own toys, books and drawing materials.

6.2.5 Children's experiences of visits

As in the case of visits to remand prisoners, a variety of children's experiences have been reported by the prison staff. In their view, some children really enjoy visiting and are not put off by the prison's environment, while others display high levels of anxiety, in particular, during the first few visits. While staff often believed that younger children are not aware of where they are and the visits have less impact on them, one of the social workers responding to the survey recalled her experience of working with a family where the father was in prison:

My conversations with the mother indicated that the needs of children are not taken into consideration during visits to the prison. [On different occasions] children were allowed direct contact with their father [sitting at a table in the general visiting area], only to be told on other occasions that they will only be allowed a screened visit [and talk to the father on the phone]. The kids were very upset, they were crying (it was their Dad's birthday and they made birthday cards for him). The 2-year-old became aggressive and started kicking her Mum; she also banged on the screen separating her and her Dad with her tiny fists. After visits like this, the 6-year-old kept waking at night, crying.

For one member of prison staff responsible for rehabilitation programmes and sentence planning, children's experiences of visits and the more general contact with their imprisoned parent depends on the nature of the relationship developed before the sentence:

From my experience of working with prisoners' children it is clear that many of the children do not come from a loving and safe home environment. Some of them would have experienced violence at home by the person who is now in prison and when they visit, they would spend most of the time sitting quietly next to their mothers. On the other hand, you would get prisoners for whom their children are the most important people in the world. During visits, you can see a lot of warmth and love between the parent and the kids then. For those prisoners, it's often the children who are the reason to change their behaviour and the decision that they do not want to be back in prison. (ZK Zytkowice)

Very few social workers, as well as prison staff, reported any experiences of social workers or court-appointed guardians accompanying children to visits in prisons. This may be linked to the practice, mentioned earlier in the chapter, of trying to find family or extended family carers for children whose parent cannot care for them, rather than placing them in state care. However, it is difficult to make any definitive statements in view of the lack of detailed information generated by the study.

Two social workers who had some experience of such visits reported very different effects on children. However, these were largely consistent with the view, noted above, that it is the relationship with the parent that matters most. One of the workers recalled a situation where she accompanied a 13-year-old boy visiting his mother with whom he

had very limited contact before. She recalled that the meeting felt like it was a meeting of 'two strangers'. The boy had high expectations of the visit and was very disappointed when it turned out to be very difficult. He never went back to see his mother again. On the other hand, another social worker recalled a case of a 16-year-old boy who had very good contact with his parents who were both in prison. Both parents kept in regular phone contact with their son and he went to visit them every two to three weeks. Towards the end of her sentence, the mother used weekend prison leave to spend time with her son and was eventually granted temporary release to live with him. They both remain in contact with the father who is still in prison.

Social workers also reported that the relationship between children and their imprisoned parent can differ depending on the age of the child. One respondent stated that, in her (limited) experience of working with prisoners' children, she noticed that older children, especially girls, are often ashamed of their fathers who are often in prison for alcohol-fuelled offences and for non-payment of child maintenance. They are not keen to talk about their fathers and often do not wish to maintain contact with them. In contrast, younger children of pre-school age often have a very positive opinion of their dads and are very keen to keep in touch with them. The respondent's view was that prisoners should take part in therapeutic programmes while in prison to be able to re-build their family relationships on release:

The way in which children of prisoners behave is a direct consequence of the father's behaviour. If they change [and address their problems], the children will see and appreciate it [following release]. (GOPS Lisewo)

6.2.6 Initiatives supporting contact between imprisoned parents and their children

A number of initiatives have recently been introduced in prisons to support contact between imprisoned parents and their children (or, indeed, between grandparents and their grandchildren). Among those is a programme introduced to AS Warszawa – Bialoleka with the help of Slawek Foundation and called 'Read to Me Mum, Read to Me Dad'.⁸⁶ It provides prisoners with the opportunity to record a CD with stories for their children. CDs are recorded with the help of professional sound technicians and a professional actor who also assists those prisoners who have difficulties reading. The CD is then delivered to the prisoner's children and their parents or carers are asked to evaluate the impact of the CD on the child, for example, by asking whether the child was happy to receive the CD and observing how often they listen to the recording. A similar initiative was also reported to be in place in ZK Wolow.

There appears to be no systematic provision of other initiatives in prisons to support the contact of prisoners with their families. Prison officers often mentioned the organisation of events in the prisons, often with the assistance of community and voluntary groups, on special occasions, such as Children's Day or Mother's Day. The approach to this, however, seems to be far from uniform. Initiatives such as the 'Read to Me Mum, Read to Me Dad' project are also currently provided on a pilot basis. While prisons provide programmes which may help prisoners in improving or establishing relationships with their children and partners, such as addiction

⁸⁶ The programme is the Polish version of the "Storybook Dads" initiative introduced in the UK. The initiative is supported by the DITTO Foundation (see more on: <http://sw.gov.pl/pl/okregowy-inspektorat-sluzby-wiezionej-warszawa/areszt-sledczy-warszawa--bialoleka/news.375.poczytaj-mi-tato-poczytaj-mi-mamo--kolejna-edycja-nowatorskiego-projektu-w-areszcie-sledczym-warszawa-bialoleka.html>)

counselling or programmes addressing domestic violence,⁸⁷ there was no mention of initiatives focusing on parenting skills, for example.

6.2.7 Other support to prisoners' families

When discussing support for families outside the prison walls, one of the social workers stated that care should be taken to include families of prisoners in active social life:

To provide families with a certain psychological comfort [we should be able], to organise outdoor trips for children, and even for whole families, sightseeing trips; we should include them in the social life of the community as those families so often feel stigmatised, socially excluded, ashamed. (OPS Miescisko)

In relation specifically to providing support to children whose parents are imprisoned, one of the social workers stated that in their experience such children have difficulties at school and often leave school as soon as they turn 16; they also often display aggressive behaviour and tend to close off from their peers and their families (OPS Miescisko). Another social worker added:

Children of imprisoned parents become introvert, they seek acceptance from their peers and others but often experience emotional difficulties [...], start displaying nervousness. [...] Such children often feel lost and become an easy target, start having problems at school and at home. They lose the feeling of safety and security, begin to display aggressive behaviour. In cases where the mother is imprisoned, children often lose contact with her and family ties dissolve. They are stigmatised. (OPS Nowy Staw)

Social inclusion is therefore vital, whereby opportunities should be created for children of prisoners to integrate with children who have not experienced parental imprisonment. It is important that social work support is organised in a way that avoids stigmatising children further:

Children of prisoners should be integrated with their peers regardless of their experience, not only sent to summer camps for children from alcoholic or otherwise 'dysfunctional' families. (MOPS Luzino)

An interviewee with 17 years experience in social work stated that help for children of prisoners should be focusing on building their self-esteem and teaching them to resolve the difficulties they experience:

We need to focus on building up the child's self esteem, on showing them their strengths. [We need to support] them in positively using the opportunities they can use to their advantage – this should mainly be the role of the school but there is also a role for other organisations and individuals [such as social workers]. We should also teach them how to deal with problems, who to ask for help. (OPS Nowy Staw)

A similar view was expressed by another social worker, in whose opinion, children of prisoners should be provided with specialised psychological support, in particular, to combat their feeling of not being as good as the rest of their peers and their low self-esteem. However, they also stressed the importance of financial support for families, either to the parent who remains with the children or their carers:

Additional financial assistance should be provided to families or carers, in particular, to those from the wider family circles, to provide children of imprisoned parents with a

⁸⁷ For example, 6,000 prisoners took part in projects aiming to address issues concerning domestic violence (<http://www.sw.gov.pl/pl/aktualnosci/aktualnosci-sluzby-wieziennej/news,1366,podsumowanie-2010-roku-w.html>)

positive home environment. They need to be supported and financially secure at a time which is so difficult for them. (OPS Plosnica)

7. Post-release and resettlement

7.1 Legal framework

7.1.1 Preparation for release

Post-release assistance is available both to prisoners released after sentence and after a period on remand. In accordance with Article 211 para 4 of the Code of Execution of Criminal Sentences (Kodeks Karny Wykonawczy), the prison authorities are obliged to provide remand prisoners with information about post-release help, including information about organisations and institutions providing such assistance. The authorities are also obliged to provide remand prisoners about to be released with financial or other assistance which will enable them to travel to their home or other place of residence.⁸⁸

In relation to sentenced prisoners, the Code states that the prison authorities should assist an individual in preparation for release in the period of up to six months before the release date.⁸⁹ Such assistance should include periods of temporary release of up to two weeks at a time to enable the prisoner to look for accommodation and work,⁹⁰ as well as provision of necessary information about institutions and organisations providing post-release help in relation to accommodation, health care and employment.⁹¹ Prison authorities should also provide financial assistance (or assistance in kind, for example, a train ticket, clothing and food) to those prisoners who are destitute on release.⁹²

The Code is silent on the need to inform the family about release. The only circumstances in which the Code states the family should be contacted is when the prisoner's health prevents them from traveling on their own to their place of residence.⁹³

7.1.2 Financial and other assistance

In accordance with the Social Welfare and Social Services Act 2004 (Ustawa o Pomocy Społecznej), sentenced prisoners are not entitled to welfare payments for the duration of the sentence and any payments due to remand prisoners are suspended pending release.⁹⁴ Article 7(12) of the 2004 Act states, however, that assistance should be provided to released prisoners particularly in circumstances when they find it difficult to integrate into the life outside of the prison. Such help may include financial assistance, but also help with accommodation, food, etc. Under Polish law, families of prisoners, who are in financial difficulties, or require other assistance, would be supported under general rules of welfare provision rather than under any specific regulations. Such assistance is means-tested.

⁸⁸ The Code of Execution of Criminal Sentences 1997 Article 211 para. 5

⁸⁹ As above Article 164 para. 1

⁹⁰ As above Article 165 para. 1

⁹¹ As above Article 166 para.s 1 and 2

⁹² As above Articles 166 para 3 and 167(a) para. 3

⁹³ As above Article 167(a) para. 6

⁹⁴The Social Welfare and Social Services Act 2004 Article 13

Additionally to social welfare provision, Article 43 para. 1 of the Code of Execution of Criminal Sentences 1997 establishes the Post-release Assistance Fund (Fundusz Pomocy Postpenitencjarnej) which is managed by the Department of Justice. The fund consists of, among other sources, 20 per cent of all income generated by prisoners who work while serving their sentence.⁹⁵ Monies from the Fund can be used to help prisoners while they are still in prison and as post-release assistance to former prisoners and their families,⁹⁶ and/or directed to organisations, including churches and community groups, which provide assistance to former prisoners, for instance, accommodation for those homeless on release.

In accordance with regulations published by the Department of Justice in 2005,⁹⁷ the Fund can be used to cover:

1. the costs of temporary accommodation;
2. the costs of information about legal entitlements and employment opportunities;
3. the costs of vocational training and other education courses;
4. the costs of healthcare, including psychological support and other therapeutic support;
5. the costs of rent for those former prisoners and their families who have their own accommodation;
6. the costs of transport;
7. the costs of issuing of identity documents; and
8. any other needs identified on assessment by the prison authorities or other bodies providing assistance.

Assistance from the Fund is provided on application from the prisoner or their family for a period of no longer than three months (six months in exceptional circumstances), after which support should be provided by the Welfare and Social Services on the basis of the 2004 Act.

7.2 The practice

There was very little information made available to the researchers regarding specific support to prisoners before the date of their release and post-release. In accordance with the law, the six months before release should be used to prepare the person for their re-integration into the community. As is clear from the regulations quoted above, however, the obligations are somewhat limited to the provision of information and the provision of financial assistance where required. The Prison Service's statistics show that the Service's budget spent for pre- and post-release assistance contributes mainly to covering the costs of specialised health support, such as addiction counselling, legal and employment advice for prisoners, employment courses and training, and financial and in-kind assistance at the time of release.⁹⁸

There was more evidence from questionnaires of former prisoners contacting social work and welfare centres following release from prison, although the social work

⁹⁵ The Code of Execution of Criminal Sentences 1997 Article 43 para. 2

⁹⁶ As above Article 43 para. 4

⁹⁷ Rozporządzenie Ministra Sprawiedliwości z dnia 22 kwietnia 2005r w sprawie Funduszu Pomocy Postpenitencjarnej (Dz.U. z dnia 26 kwietnia 2005r.)

⁹⁸ Ministerstwo Sprawiedliwości/Centralny Zarząd Służby Więziennej (2010) *Roczna Informacja Statystyczna za rok 2009*, Warszawa: Ministerstwo Sprawiedliwości (*Annual Statistical Information for 2009*). Available at: <http://sw.gov.pl/Data/Files/kunickim/statystyki/roczne/rok-2009.pdf>, p. 22, Table 39

managers who responded to the survey stated that such contact would still be rare. Former prisoners most often applied for financial assistance but some would also approach the centres for legal advice and information about therapeutic interventions and addiction counselling. According to respondents, former prisoners often had difficulties in understanding the processes of application for assistance and therefore were of an opinion that access to help is difficult and that the centres are not able to help them effectively. While some respondents stated that their qualifications and experience allow them to address the needs of former prisoners, nearly a third stated that the work could be done more effectively if they received appropriate training, for example, in the effects of imprisonment or if the centres had dedicated staff resources to work specifically with former prisoners.

Social work managers consistently stated that social work and welfare staff collect information about the former prisoners' family situation. Information about the number of children, their ages, whether the individual retains parental rights and whether he or she has contact with children is then recorded in the person's file. If the information provided by a former prisoner indicates that children, or the family as a whole, may be in need of support, they arrange a home visit to assess the situation and the nature of support required.

Most of the social workers who responded to the survey agreed that they would encourage former prisoners to maintain contact with their children and, in situations in which the other parent or legal guardian opposes such contact, they would try and work with them to establish at least some links with the children. If necessary, supervised meetings or family mediation meetings can be organised in the social work and welfare centres.

A social worker noted that the reasons for imprisonment can play a vital role in how the family ties can be re-built or not:

I think I always remember most the situations where a father who is an alcoholic and who abuses his family is arrested and imprisoned. When the father is absent, the rest of the family have an opportunity to re-build their lives, learn how to resolve problems in their daily lives and learn how to make the best of their new situation; for them it's a respite. [For such families], even though they remember how it is to live with an alcoholic and an abuser, every day now can be a good day. For them, the last days of the father's imprisonment can be a nightmare and they can find it hard to accept that that person is coming back; that the history [of abuse] will repeat itself.

There was no indication from the information collected during the fieldwork whether any efforts are made in such situations to assist families in re-establishing appropriate relationships or whether any help is provided to deal with prisoners' return home. In this context, a number of social workers who responded to the survey stated that communication between the prisons and social workers and the social work and welfare centres should significantly improve if support mechanisms to help former prisoners and their families were to be administered more efficiently and appropriately. As one of the social workers put it:

At the moment, the cooperation between remand prisons [and committal prisons] and our centre is limited to the prison administration sending us a letter stating that such and such is leaving the prison and that help will be required. There is no exchange of information about the person leaving prison, neither is there any interdisciplinary cooperation to support their successful return to the community. I would like to see more opportunities for social workers to work directly with prisoners before release and

*for prison staff to learn what social workers do and what help they can actually provide.
(MOPS Poznan)*

8. Conclusions

As stated in the introduction, Poland has a reasonably progressive legal framework that places considerable focus on prisoners' family relationships and recognises the importance of family links in achieving better outcomes for prisoners on their release. This includes regulations specifically designed to sustain contact with children, such as the right of sentenced prisoners to additional visits by children under 15 years of age. It appears from the evidence, however, that the practice in relation to both the quantity and quality of the contact depends very much on individual prisons, and the provision of facilities and other support varies significantly between prisons. Questions of appropriate practice arise also in relation to police procedures at the time of arrest and in relation to improving support to prisoners and their families at the time of release.

8.1 Arrest

Concerns were raised that the Police Service in Poland does not provide any specific guidelines on dealing with children who witness an arrest of a parent. While the general guidelines on the treatment of children who come into contact with the police are useful, an arrest of a parent can be extremely stressful for a child, particularly if effected at home and/or when it requires the use of force by police officers present. The researchers were unable to verify the content of training provided to officers within the more generic arrest training, but it is reasonable to assume that an overall programme of 30 hours which has to cover all aspects of arrest does not include much detail as to the appropriate treatment of children in such situations. It is important that police officers are provided with specific skills and knowledge that would include understanding of children's rights and the understanding of the impact on children of witnessing parental arrest.

8.2 Imprisonment on remand

Although the number of prisoners on remand in Polish prisons is relatively low as a percentage of the overall prison population (at just over 10 per cent), the length of time spent on remand can be quite significant (up to two years, if not more). Therefore, the impact of parental imprisonment, even where the person does not go on to receive a custodial sentence, on both the child and the parent can be considerable. Prisoners and prison staff reported that during the remand period, prisoners may choose not to see their children as they feel that seeing them in prison will be too traumatic for the children. It is therefore important that imprisoned parents are encouraged to keep in contact with their child while on remand to the greatest extent possible, and that facilities are provided which make the experience of a visit to prison less stressful. The impact of the restrictions imposed on remand prisoners should be considered in this context.

At the moment, remand prisoners are afforded very few opportunities to keep in touch with their children if they are subject to restrictions imposed by the prosecuting authorities. The recent changes in the law concerning the separation of permissions to visit for children and for the other parent are encouraging. Specialised training should, however, be provided to prison staff in dealing with children who are visiting without the support of the other parent in circumstances where the parent has been refused the

permit to enter the prison. It is important that the absence of the other parent during the visit does not add to the already stressful experience of visiting the prison. More generally, prison staff facilitating visits from children in remand prisons should be specifically trained to facilitate visits to imprisoned parents in any circumstances.

While it is too early to assess the impact of the recent changes in relation to the procedure for granting permission to visit, it was of concern that prisoners reported significant delays in obtaining decisions regarding their status. Considering the impact of the restrictions on the relationship between the imprisoned parent and their children, the prosecuting authorities should ensure that, in particular, where requests for visits to remand prisoners concern their children, decisions are taken without undue delay. Where restrictions on visits are considered absolutely necessary (and in the case of restrictions on visits from children this should only ever happen in exceptional circumstances), contact other than through visits should be actively encouraged. In this respect, initiatives such as 'Read to me Mum, Read to me Dad' should be extended to all remand prisons.

The evidence provided by the study shows that the quality of visiting areas varies greatly between different prisons and, while some good practice in relation to the provision of child-friendly and family-friendly facilities has been observed, such provision appears to be still an exception rather than a rule. As revealed above, staff and prisoners reported that their greatest concern regarding visits from their children is that the experience of coming to the prison will be too stressful for them. Such stress is clearly caused by factors going beyond the physical environment of the prison and it may never be entirely eliminated. The provision of spaces which take account of the needs of children and encourage engagement with children through play, etc., can, however, at least to some extent mitigate such stress. The prison authorities should consider a rolling programme of improvements to visiting areas in all prisons to include child-friendly facilities.

Finally, as stated earlier in the chapter, remand prisoners have the right to be informed of any decisions taken about their children by family courts, social services or other authorities. The study, however, was unable to establish whether such information is in fact passed on to prisoners. It was encouraging that prison staff reported that they note all appropriate information about the prisoner's children on his, or her, committal to prison and that they are at least trying to encourage prisoners to make contact with the appropriate authorities to ensure support for their family. The practice, however, did not appear to be consistent in relation to how such contact is made and with whose assistance. An example of what appears to be good practice was reported in AS Sroda Wielkopolska, with the provision of an advice clinic in the prison. Consideration should be given by the Polish Prison Service to extend such practices to other prisons. Information should also be made available to the families who visit prisons, in particular, information regarding financial and other support available from state authorities and community sector organisations.

8.3 Imprisonment on sentence

The Polish law states that encouraging and developing family relationships is one of the means of achieving the aim of imprisonment which is the development of socially acceptable behaviour and the promotion of desistance. Accordingly, the law guarantees all prisoners the right to keep in contact with their family and other persons with whom they have a close relationship. In turn, the prison authorities are obliged to support such contact through the provision of practical means, such as access to phones, and other resources.

As was the case with remand prisons, good practice was reported in sentence prisons in relation to the recording of information on committal about prisoners' family relationships. It was also encouraging to hear that prisoners are facilitated in making contact with the appropriate authorities, such as social services, should the information provided indicate that support to the family or children is required as result of parental imprisonment. It was of concern, however, that staff reported having no specific training in dealing with children who visit their parents in prison. While some good practice was reported both in relation to the conduct of security checks and the practice of facilitating visits from children, it is important that staff are trained in the impact of visits on children and in what role they can play in mitigating the anxiety felt by children during visits to their imprisoned parents.

While there was very limited information collected in the course of the fieldwork regarding the provision of child-friendly facilities in sentence prisons, the data available indicates that the approach in different facilities varies significantly. There also appears to be no systematic provision of other initiatives in prisons to support the contact of prisoners with their families. While prisons provide programmes which may help prisoners in improving or establishing relationships with their children and partners, such as addiction counselling or programmes addressing domestic violence, there was no mention of initiatives focusing on parenting skills, for example. It is important that, beyond the provision of child-friendly facilities in prisons on a wider scale, prison authorities also consider the need for the introduction of a range of programmes which will support the development of child-parent relationships beyond the 'traditional' means of visits, letters and phone calls, and give prisoners an opportunity to learn new skills which may assist them in maintaining positive relations with their children.

Chapter 8: Conclusions

By Lucy Gampell, Agnieszka Martynowicz and Peter Scharff Smith

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.¹

The overall objective of this study is to contribute to the development of uniform legal rights, policy and administrative practices in the European Union (EU) in order to secure the best interests of children of imprisoned parents. The study has drawn on existing literature and knowledge relating to the impact of parental imprisonment on children across the EU and further afield; analysed the legislative framework concerning human rights and children's rights; and included new, qualitative national research conducted in Denmark, Northern Ireland, Italy and Poland. As a result, what is presented in the preceding chapters provides comparative information on the national and European experiences of, and best practices in, the treatment of children of imprisoned parents in accordance with international human rights standards. By identifying the major problems and issues which confront children of imprisoned parents, it is hoped that this report will contribute to the prevention of inflicting long-term, negative repercussions for these vulnerable, and all too often, forgotten children.

The study took place at a time of rising prison populations across Europe. Despite a seemingly increasing awareness and use of human rights instruments, the desire for punishments to be seen to be tougher and deprivation of liberty being seen as a meaningful punishment is growing. Common to all the case studies within the report is the difficulty of not knowing how many children are affected by having a parent in prison. Data is not systemically collected and it is therefore very hard to arrive at an accurate figure which makes it extremely difficult to protect the interests of these children and ensure that they and their families receive the services and support needed to cope with the situation of the imprisonment of one or both of their parents. In Poland, a figure is derived based on those prisoners found to be making maintenance payments to their children; in Northern Ireland, it is estimated based on visits by children to prisons; and in Italy and Denmark, the figure is based on data from prisoners who have disclosed their parental status. The figures produced, provide some indication of the magnitude of this issue.

1. The legal framework

All member-states of the European Union and the Council of Europe are signatories to the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the UN Convention on the Rights of the Child (CRC), and are therefore required to put into practice the rights included in both. Demonstrating the high level of consensus among states on the necessity to protect the specific needs and rights of children, the CRC, with 193 signatories, is the most ratified human rights instrument in the world.²

¹ Article 3(1) United Nations Convention on the Rights of the Child 1989 (CRC) (*emphasis added*)

² All case study countries involved in the project have ratified the CRC

Within the ECHR, Article 8 protects the right to privacy and to family life whilst, within the CRC, those rights of particular relevance to the situation of children with imprisoned parents are:

- the right to be free from discrimination, including where such discrimination might be consequences of the status and actions of their parents;³
- protection of the best interest of the child;⁴
- the right to have direct and frequent contact with parents from whom the child is separated;⁵
- the right of the child to express his or her views and to be heard in matters affecting their situation;⁶
- the child's right to protection of their family life and their privacy;⁷ and
- the right of the child to protection from any physical or psychological harm or violence.⁸

This study looked at international and regional legally binding instruments, such as the International Covenant on Civil and Political Rights (ICCPR) as well as the jurisprudence from the European Court of Human Rights, which plays a pivotal role in upholding human rights as its judgments are legally binding on the states to which each case relates. It also incorporates soft law instruments such as recommendations and resolutions from the Parliamentary Assembly and the Committee of Ministers of the Council of Europe,⁹ and reports from special UN and Council of Europe monitoring bodies. Whilst soft law instruments are not legally binding as international treaties are, they are signed by states and are engagements of states to make efforts to comply with the provisions that they contain.

1.1 Protection of the best interests of the child

The principle of the protection of the best interests of the child is reflected in the national law governing the four case studies involved in the research, either in domestic provisions such as national human rights law or legislation relating to safeguarding children, and through the incorporation of the CRC. The principle of the best interests of the child is also present in national and European Prison Rules 2006 (EPR). For example, the EPR state that:

The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

However, as can be seen from the studies documented in this report, these rules and principles are open to interpretation and the reality for children of imprisoned parents is that, all too frequently, the policy and intent does not match the practice and experiences of children.

³ CRC Article 2

⁴ CRC Article 3

⁵ CRC Article 9

⁶ CRC Article 12

⁷ CRC Article 16

⁸ CRC Article 19

⁹ Council of Europe (2009) *Penitentiary questions. Council of Europe conventions, recommendations and resolutions* Strasbourg: Council of Europe

In order to monitor states' compliance with the CRC, states must present a report on the implementation of the CRC every five years (often supplemented with a shadow report by NGOs). The Committee reviews the report and formulates observations on the situation in the country. At the domestic level, the legal status of the CRC varies from one country to another even though the Committee insists on the fact that the CRC must be made directly applicable in domestic law.¹⁰ Significantly in Poland, the CRC is directly enforceable according to Article 91 of the 1997 Constitution and forms part of the legal system.¹¹ Consequently, the Constitutional Court in Poland can examine the compatibility of law and practices with the CRC, providing judicial scrutiny of the implementation of the Convention.

When it comes to applying the rights of children of prisoners within the law, however, all too frequently they are over-ridden by considerations concerning public safety, security and punishment. In addition, the right of the parent generally takes precedence over the right of the child. For example, the right of the child to frequent and regular contact with his, or her, parent in prison is applied through the prisoner's right to respect for family rather than being addressed through the child's rights. Yet, if the human rights standards protecting the best interests of the child are to be applied consistently, arrest procedures, sentencing practices and principles, and the treatment of prisoners will need to take full account of the rights of children of prisoners.

1.2 The right of the child to express his or her view and to be heard in matters affecting the child

According to Article 12(1) of the CRC:

the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. [This right concerns] any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

This should mean that whenever consideration is being given to taking a parent into custody, whether at arrest, pre-trial or sentencing, and when decisions are subsequently made regarding location, visits and release, their children ought to have their views taken into account. This study, however, found few examples where children's views were taken account of within the legal framework.

1.3 Non-discrimination principle

Article 2 of the CRC contains a non-discrimination provision, which states:

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.¹²

¹⁰ See, for example, in the case of Denmark, where the CRC is not incorporated in Danish legal order: Committee on the Rights of the Child (2005) *Concluding Observations on Denmark CRC/C/DNK/CO/3*

¹¹ See Chapter 7: The Polish case study p. 174

In the context of children of imprisoned parents, this implies that children must not be discriminated against because of the activities of their parents. There is, to date, no indication of how the non-discrimination principle may be received by domestic courts or the Committee as an element to substantiate claims of children of imprisoned parents. Yet, children repeatedly report feeling stigmatised, bullied or ashamed as a result of parental imprisonment and by the reaction of those around them. This is particularly acute where the crime is of a more serious, especially, sexual nature and where there are salacious media stories covering the crime and trial. For example, in Northern Ireland, family members reported not wanting their children to share visits with families of sex offenders, and the 'double stigma' for families related to a prisoner and to a sex offender was raised:

Those folk withdraw, which creates a host of other issues. They experience fear of the offender, fear of the community, fear of trying to step out to start a life. We know the cruelty of the school playground. (NGO worker, Northern Ireland)

1.4 The right to respect for family life

The detention of the parent is one of the situations where, as the consequence of detention, children and parents are separated from each other, with the exception of when babies and very young children may be kept in prison with their mother. However as noted above, the ECHR states:

Detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. (...) However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family.

The right to keep contact with family members, including children, is threefold. It includes:

1. a right to be informed of the whereabouts of each other (in order to establish contact);
2. a right to communicate with each other; and
3. a right of prisoners to receive visits.

In addition, it imposes positive obligations on the state, such as, the obligation to offer legal guarantees when decisions are made by public authorities on contacts, or the obligation for relevant public authorities to assist parents and children to maintain ties during the period of detention. It must be added here that interference with parental rights can only be justified in exceptional cases, for example, in child abuse situations where continued contact is deemed not to be in the child's best interests. An automatic ban on exercising parental rights for prisoners is therefore deemed unacceptable by the ECHR.

2. The treatment of children of prisoners from arrest to release

Over the course of this study, the application of these rights in respect of children of imprisoned parents has been examined in the context of four distinct phases, namely arrest, pre-trial, sentencing and the period of imprisonment, including release.

2.1 Arrest

It is evident that in most situations where the child is living with their parent, the arrest and removal of a parent is likely to be the start of a series of traumatic and distressing events for the child. This is particularly the case where children are actually present when the arrest takes place. Even in situations where removal of a parent perhaps brings respite to the family, such as in circumstances of an arrest of a perpetrator of domestic violence, the experience of arrest is not neutral. The child may, for example, blame him- or herself for the violence, or for not being able to stop it, and in turn blame themselves for the arrest taking place. If neighbours and others witness the arrest, this can be the start of feelings of shame and stigmatisation.

The role of the police in protecting the rights of children at arrest is an area hitherto afforded little attention. The research conducted in Denmark, Poland and Northern Ireland included some interviews with police officers and the Italian researchers interviewed a Colonel of Police in order to gain an insight in to police arrest procedures in relation to children of arrestees. While some good practice has been recorded, the studies indicate that the focus of police action is on the arrest of the suspect and criminal justice considerations tend to take precedence in actions of the police over any family considerations, including the rights and situation of children who witness arrest procedures. Police guidelines on arrests or police codes of conduct in the four case studies give little guidance as to the approach to be adopted towards children in relation to arrest procedures. Each of the case studies, revealed a need for more detailed guidance and training as to how to behave if children are present during an arrest and on the need to provide families with timely information as to the whereabouts of the arrestee. For example, there is no standard practice regarding identifying whether the person arrested has children and what procedures should be followed to safeguard children's wellbeing.

In most of the case studies in this research, police officers were not given any specific training in relation to how to behave when a child is present or if a child is affected in any other way, for example, when the child's possessions need to be searched for evidence. In particular, none of the police officers in the four case studies mentioned any training on children's rights and the way in which police action may violate them. In Denmark and Poland, training provided to new recruits does take account of the situation where police may be making an arrest where children are present, although it is not an independent topic in either country. Evidence suggests that older Danish policemen had little or no training in that regard and new police officers are better prepared with regard to handling issues relating to children of suspects when they leave the academy. However, there was a general sense that police primarily learn from experience: several officers recounted difficult experiences which had left an impact on them and it was felt that each situation demanded a unique response:

No two arrests are the same and therefore, you cannot teach according to a clear-cut model. (Tutor, Danish Police Academy)

Not surprisingly, the arrest of a parent itself can be a very unpleasant and traumatic experience for children who witness it. This is apparent with graphic clarity from the accounts by the affected children and confirmed by the police.

The officer said that we had to leave the room so he could check it for drugs. When we were on the way out of the room, he opened my drawers and began throwing out my underwear, among other things, all over the place. It was so insulting I felt as if I was a criminal. (Carina, 16 years old, Denmark)

Police officers interviewed in Denmark described having experienced children who cry when their parents are arrested and about one-third witnessed children who cling to their arrested mother or father. In Denmark, a little less than half of the police staff experienced children who are afraid of the police and one-fifth came across children who have reacted in a distinctly hostile way towards them. In Northern Ireland, concerns were raised about the approach adopted by police and the negative impact the arrest process had on children's wellbeing and their perceptions of police. For example, one mother explained that her children 'probably hate the police for taking their daddy away', and another said:

*My number one priority, forget me, would be the younger ones in the family who have witnessed and watched, what do you call it, the handcuffing, the midnight arrests.
(Mother, Northern Ireland)*

The findings are supported by studies, reviewed in Chapter 2, which revealed that witnessing police actions during the arrest of a parent or other family member may leave children emotionally scarred and contribute to children's hostile views of the criminal justice system.

While police officers often said that they would contact social services if they were concerned that a child would be left without care, very few said that they routinely ask parents whose children were not present at the time of arrest if they have children. None of the police officers surveyed said that they would give children information about the parent's arrest or about where they were taking them. This responsibility is left to the remaining parent or relatives or, indeed, neighbours or social workers. As the quote below indicates, the other parent may not always be in a position to let the children know what is happening, as they are not given this information by the police.

She (children's mother) knew I had been arrested but she never knew where I was or what was the case. So after two days I was allowed to phone her so the wife and children hadn't seen me for two days or heard from me for two days; after that I was allowed to phone her and then that was it, she was able to come to the police station and see me. (Prisoner, Northern Ireland)

Parents and carers who have to explain to the child what happened to their other parent often find it difficult to decide how much to say to their children and when. Some families feel that it is best to be truthful from the very start. This is particularly, but not exclusively, true when the case has a high profile and parents are aware that children may find out independently, for example, from their peers. Children are often very capable of handling the news well. As one of the prisoners interviewed in Northern Ireland explained:

We brought them up to a visit... I was only in three or four weeks at that time and I sort of says, 'Let's just set them down at the table on visits' and just sort of explained, not any details of the case. Because we thought at that stage it would have been a wee bit upsetting to go into the details – although we did later... And the more information they got, they definitely were able to cope with it.

Sometimes the information that the child receives is incomplete or the child is told a 'story' and, while most of the time half-truths are told with the intention of protecting the child from the reality of parental arrest, the evidence indicates that this may leave children worried, confused and often distrusting if they later learn what really occurred. Diana's mother, for example, told her that her father was in Germany but she knew that this was not true:

I cannot blame [my mother] for wanting to protect me but I could just have used the truth for a number of things. Then I wouldn't have to tell lies at school and perhaps it might have been easier to talk about it at home. (...) When she tells me something (now) I automatically think: is that really true? (Diana, Denmark)

The lie about his father's whereabouts (as an employee in the police car wash service) is significant. Johnny's dad has told him that he will not be allowed to help him at work until his hands are as big as his dad's and he'll be able to wear suitable work gloves. It's a tall tale, but Johnny pretends that it is true, so as not to disappoint his parents, even though his cousins have told him that his dad is in prison and that they can't play with him as a result. (Johnny's worker, Case study, Italy)

Clearly, the decision about what and when to tell their children has to be left to the discretion of the parent or carer, but parents should be supported and enabled in their role so as to encourage them to be open with their children in an age-sensitive manner. Families should be given full information about the grounds for arrest where this is not prejudicial to the police inquiry and kept informed about the likely length of the arrested person's stay in police custody and their exact whereabouts, and the procedures for contacting them when detained by the police. Such measures are necessary to attempt to alleviate concerns raised in the research about the lack of communication with families and the additional stress this may cause.

2.2 Pre-trial imprisonment

The *European Prison Rules* (2006) are clear that the status on prisoners awaiting trial should not be influenced by the possibility that they may be convicted in time of a criminal offence. The Rules are also clear that the right of remand prisoners to visits and other contact with the outside world can only be restricted in exceptional circumstances. From the perspective of the rights of the child to effective contact with their parent, such restrictions should only ever be in place when absolutely necessary. National laws and practice, therefore, should be mindful of the situation of children when limiting such contact.

The period of detention on remand represents a particularly difficult time for families of those arrested, and for remand prisoners. Families find themselves in often unfamiliar situations (particularly those for whom pre-trial detention is a new experience), having to deal with loss of contact, loss of income, legal procedures, involvement of social services in their life, and lack of information. Additional stress is inevitably caused by the uncertainty of the outcome of criminal investigations and the anxiety around whether or not to let their children, relatives and friends know about the arrest.

In many ways, this period is different to the time of imprisonment on sentence, particularly in those countries where an inquisitorial system is in place (Italy, Denmark and Poland), as prosecutors and police may be concerned that the accused will try to influence witnesses or the criminal investigation in other ways. The studies found that in Poland and Denmark, in particular, remand prisoners are only allowed very limited contact with the outside world, including with their children and family. In Poland, for example, all remand prisoners have to make an application to the police and the prosecutor to be allowed visits. In Denmark, many visits and correspondence are supervised by the police and some remand prisoners are held in solitary confinement which impacts not only on the quality of contact permitted between the prisoner and his child, but also potentially on the prisoner's mental wellbeing and ability to relate positively to their visitors. Despite recent changes regarding the use of solitary

confinement during remand, the data shows a significant number of people who are still held in solitary confinement.

Children do not have a separate right to visit their parent in prison but have to rely on the prisoner to want to see them. Some children may have to wait for months to see their parent who is held on remand due to restrictions on visits and then, even where visits are allowed, these will usually happen under very strict conditions, for example, with no physical contact. In some cases, there are limits on the number of visitors who can come at any one time which impacts negatively on the situation of families with several children, leading to a 'lottery' of who gets to visit. Such restrictions impact directly on the right of the child to be in regular and direct contact with both parents.¹³ It is therefore encouraging to note the recent, potentially beneficial, legislative changes in Poland which mean that children's right to visit is now separate from the right to visit with a parent or carer whose own contact with the imprisoned parent may be subject to restrictions for legal reasons.

2.3 Sentencing

Where the defendant has child-caring responsibilities, the Committee recommends that the principle of the best interest of the childis carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child.¹⁴

According to the UN Committee on the Rights of the Child,¹⁵ the courts are allowed, and even expected, to take into consideration the family circumstances of the person accused of the crime when making decisions about both remand and sentence. This is particularly the case if the person before the court is a primary carer of children. This could mean that children should be permitted to make statements to the court on the impact their parent's imprisonment would have on them.

The research found that in Poland the Code of Criminal Procedure 1997 explicitly states that pre-trial detention may not be appropriate if the person is the sole carer of a child or if they are the only person providing financial means to the family. Practice in Northern Ireland indicates that the family situation of a defendant can be an important factor in deciding what the sentence should be and, increasingly, sentencers are taking into consideration the needs of children before sending the parent to prison. Such cases are, however, still rare and cases persist of parents, including mothers, being imprisoned for minor, non-violent offences. In Denmark, the Children's Council has recommended:

[how children are brought up] should be a significant factor in the choice of punishment. Here it would be relevant to prioritise sentences which limit the separation between the child and parent, for example, a form of punishment where the parent continues to sleep-over in the home.¹⁶

¹³ CRC Article 9.3

¹⁴ UN Committee on the Rights of the Child (2006) *Forty-first session, Concluding Observations: Thailand* 17/3/2006 CRC/C/THA/CO/2

¹⁵ As above

¹⁶ (2005) Report to the UN Committee on the Rights of the Child. Supplementary report to Denmark's 3rd periodic report 'Children's Committee', January 2005

There is also the possibility of the courts passing a suspended sentence in cases where the defendant is pregnant or where the needs of the children require it. In Northern Ireland, a number of recent examples, cited in Chapter 5, suggest that sentencers are increasingly making reference to the impact of a custodial sentence on children within their judgments and in some cases this has resulted in a reduced tariff, including a reduction in the length of the custodial sentence imposed.

Within the case studies, Italy has taken the most steps to incorporate the need to take account of the disproportionate impact of imprisoning mothers and primary carers into national law, where, for over two decades a succession of laws have sought to address this issue. The Simeone-Saraceni Law 1998 introduced the possibility of house arrest for health or family reasons, especially for pregnant women and mothers with children under the age of 10. The law also applied to fathers, if they were the main carer. This law also established the minimum requirements for play areas operating in prisons or in women's sections in order to enable imprisoned mothers to keep children with them up to the age of 3. This was followed by the Finocchiaro Law 2001, which introduced special house arrest for mothers with children under the age of 10, even for sentences of less than four years, provided that there is no possibility to commit further crimes and that they have served at least one-third of their sentence. The mother may be authorised to leave the residence to work, for assisting children on the outside and, if there is no job, for the sole purpose of taking care of their children. The Law also gives the right for a third lawyer to represent the child within the special family court. However, since the Law was passed there have been a number of problems over its practical implementation, which organisations such as Bambinisenzasbarre have sought to bring to the attention of the government and, during the course of the study, legislative amendments were agreed for implementation from March 2011.

Overall however, the findings indicate that the circumstances and needs of children of prisoners are not taken into account to a sufficient degree at the sentencing stage. In view of these findings and international human rights standards, greater consideration should be given to the impact of sentencing decisions on children.

2.4 Imprisonment after sentence

It is very clear from all the case studies that on imprisonment after sentence, the quality, frequency and methods of contact vary enormously according to the conditions, culture, arrangements and locality of the prison in relation to the child's home and contact arrangements are rarely introduced on a nationwide basis. Each of the case studies has a legal framework provided by prison rules and orders that place some focus on prisoners' family relationships and what is required to maintain those. Contact can be maintained through visits, phone calls and letters and, generally towards the end of the sentence, through day release, as well as structured temporary release on licence, although this is not available to all prisoners. There are also a number of other opportunities to sustain contact between prisoners and their children such as family days and special children's visits. There is no doubt that prisoners have a right to receive visits in prison and that children have a right to contact. However, the child's rights to contact are never at the forefront of decisions regarding contact with their imprisoned parents and those cases which have gone before the European Court of Human Rights have been taken from the perspective of the prisoner, **not** the child. They have covered issues such as refusal of visits for partners and children, limitation of frequency and duration of visits, conditions under which visits take place, for example, closed visits behind glass, and the distance a prisoner is held from his family. In Italy, in particular, there are issues regarding restrictions on visits to those convicted

of Mafia crimes and, in Northern Ireland, the specific sectarian and political prisoner issues give rise to unique challenges and problems. However, the Court is clear that in the absence of an established security risk, a special regime that denies any physical contact between a prisoner and his visitors cannot be justified.

Whilst, in general, the study found that guidelines support locating prisoners near to their home in order to facilitate contact with their families and children, in reality they are all too often sent many kilometres away, thus making visits extremely problematic and costly for families:

I haven't visited him very often. We have to spend a whole day driving just to be there for two hours. (Prisoner's child, Denmark)

2.4.1 Visits

Positive examples of prisons providing support with family contact in relation to prison visit arrangements and in cases of an emergency were observed in each of the case studies. For example, in Poland, prisoners who have custody of children below 15 years of age can request an additional visit per month. In Poland and Denmark, it is also possible to combine a number of visits per month into longer ones. This means the visits will be less frequent, but the arrangement may be more practical for families, especially those who have to travel considerable distances to visit their relative in prison. In Italy, the researchers reported that in the Lombardy region most prisons organise special events for children and prisoners to enable them to spend some quality time together. Also, in Northern Ireland, the provision of 'child-centred' visits is highly valued by prisoners and their families, and broadly viewed as an example of good practice:

...it's seeing wee stupid things like swinging him and running up and down and chasing him, he always brings two cars over – he wants me to push a car up, he wants to push one back towards me.... he just stands his ground and waits until he gets the red car so he can drive up and down. It's brilliant – I love it, honestly. Tremendous! (Prisoner, Northern Ireland)

However, these initiatives are generally at the discretion of the prison governor and often rely on the goodwill of staff who may even undertake such duties in their own time, and are therefore open to being withdrawn at any time. They are offered as a privilege, rather than as a right and their withdrawal is used as a punishment for prisoners' infringement of disciplinary rules.

The high cost and inconvenience of travelling, especially via public transport, to prisons which are often some distance from where the family lives and from public transport stops, deter many families from visiting. Despite positive examples of support offered to address this issue, the research highlighted limitations in relation to the various approaches adopted in the case studies. In Northern Ireland, a government Assisted Prison Visits Scheme provides financial support for families on low income to visit relatives in prison; however, many families are either not aware of its existence or choose not to claim due to the bureaucracy this would entail. For others, particularly where the prisoner was in another UK jurisdiction, the assistance did not meet the full cost of travel and subsistence, and failed to ameliorate financial hardship. Moreover, children are excluded from the eligibility criteria for assistance. In Poland, financial support is discretionary and can depend on the area in which the family lives. In Denmark, the legal framework is relatively well suited for supporting prisoners' families and children of prisoners financially, but often the local authorities and social services

are unaware of the children and the relevant family situations and no contact is established.

Every aspect of the relationship between children and their imprisoned parent is in some way regulated by the fact that their parent is in a prison. Prison security and convenience dictate the visiting times, the duration of the visit, whether or not prisoners can have physical contact with their relatives, when, and for how long, they can speak on the phone and how many letters they can send. Nothing about visiting a parent in prison is 'natural' and the impact of visits to prison on a child's relationship with their imprisoned parent is therefore profound. The experience of the visit also depends on a range of dynamic factors:

- the child's relationship with their imprisoned parent;
- the relationship between the two parents or between the imprisoned parent and carer who accompanies the child on the visit (where this has broken down, the child may be prevented from visiting);
- the child's feelings about the crime the parent committed; and
- the way he or she is treated by the prison staff and the kind of physical environment children find themselves in while visiting the prison. This is particularly the case for older children for whom there is very little to do on a visit, as most of the activities which are provided are geared towards younger children.

There are no good places in prison [where a visit by children could be organised]; a place of detention will always be inappropriate for this. The only thing you can do is to make what we have a bit more friendly – provide toys, paint the walls in cheerful colours... (Prison officer, Poland)

The atmosphere and culture of prisons are rarely 'child-friendly'. Many of the visiting facilities are designed with adults and security in mind, whereby they are equipped with tables and a fixed number of chairs only, with not enough space for children to play. In Denmark, greater attention is being given to the needs of children visiting and visits take place in individual rooms which allow the possibility for privacy and conjugal contact. However, whilst considerable improvements have been made, the rooms are not always furnished with the needs of children in mind and can be particularly small and unpleasant, especially in some remand prisons.¹⁷ Children are still not allowed to bring their own toys and, as with other examples in the study, those available at the prison are not always in good condition or appropriate for older children visiting. Restrictions on the number of children visiting at some prisons means that sometimes the family must determine which children will go on a visit to see their parent and which will not. Even where minimum standards for visiting facilities have been introduced, as in Denmark, the lack of resources for refurbishment in many of the prisons means that child-friendly areas are not provided.

Some innovative approaches to children's visits have been identified in the case studies. For example, in Denmark and in Italy, there are sometimes outdoor facilities that can be used by prisoners and their children during visits. Denmark also runs a project with children's officers and, in Northern Ireland there are family support officers in each prison responsible for improving the experience of visiting for children and families. Alongside these, initiatives such as children's forums and family groups have developed enabling dialogue between children, families and the prison. There were also examples of extended visiting times to allow children to visit after school, or

¹⁷ See Chapter 4: *The Danish case study* (visiting facilities)

without another adult being present, to enable them to have a more meaningful and informal visit with their parent. In Denmark, the Danish Prison Service has set up a Children's Forum where children's NGOs, the DIHR and others meet to influence policy and practice and the Service is currently committed to creating child-friendly visiting conditions across the system.

Another factor identified in the research is the effect on the quality of the visits arising from the way in which children are treated by staff. This relates to the culture in individual prisons, the approach of staff and their training. In some of the prisons included in the case studies for this research, there is evidence that staff are doing their best to accommodate children's needs, for example, by providing training in relation to security searches. In Italy, the Justice Ministry issued a circular instruction in December 2009 instructing prison staff in all Italian prisons to pay particular attention to children visiting the prison and to foster quality contact¹⁸ wherever possible.

Prison officers who have family contact and manage the visits areas need appropriate training. Training particularly with respect to family visits is crucial and would acknowledge the professional role they [prison staff] carry out and the complexities involved with visits, particularly during the delicate entry phase prior to the actual visit itself. (Education worker, Chieti Prison, Italy)

We take a great deal of consideration when the children are uneasy. Among other things, we crouch down and show them the handheld metal detector and let them hold it because, usually, that's what they are afraid of. (Prison worker, Denmark)

Search procedures should respect children's rights and, in particular, respect their right to privacy and bodily integrity. This would have implications for 'pat-down' searches of children and the use of drug dogs which can be particularly frightening to children and deter them from wanting to visit again.

Yesterday we found heroin in an 11-year-old child's trousers. So the control and frisking becomes more stringent for a period. (Prison Officer, Denmark)

Security staff need to be specially trained to talk with children appropriately and, in particular, in how to minimise the fear and negative effect of searching procedures on children. Account should also be taken of the needs of disabled children; however, the lack of facilities for disabled visitors was highlighted in the study in Northern Ireland.

Another problem which children experience is the lack of consistency between prisons. For example, whilst, generally, children are not permitted to take in their own toys, one officer in Poland told the researchers how, even though private toys are not supposed to be allowed on visits, the staff would not see it as a problem if a child wants to bring some toys in. Children reported that they would welcome clearer rules and greater consistency about what is, and is not, allowed:

So, you're allowed to take a drawing in with you, and then you're not next time. You can't take a gift inside one time, and then you are allowed to take something along another time. [...] it's just really annoying. (Kristian, Denmark)

In Northern Ireland, the women's prison has recently developed an extended visits scheme where mothers can have an unsupervised visit with their children for up to six hours.

¹⁸ Ministry of Justice (2009) Circular DPP: PEA 16/2007/2009

2.4.2 Telephone calls and letters

Visits are not the only form of contact between prisoners and their children and, indeed, some prisoners do not want their children to come to visit them in prison, relying instead on maintaining contact through letters and phone calls. Advances in technology over recent years mean that people rarely stay 'out of reach' in their day-to-day life. Children are accustomed to being able to communicate instantly with their family and friends using mobile phones and the internet. Yet, neither of these is available in prison, primarily for security concerns. Additionally, telephone contact is restricted to one-way calls which must be made by the prisoner, does not take place in private and the cost of calls to prisoners who have limited finances available can restrict their ability to call. In Northern Ireland, for example, prisoners are charged significantly more to contact their families in comparison to the cost of phone calls on the outside:

It's extortionate, so it is. (...) it's £20 a week I put in [on the phone card] but it's crazy... I would phone probably for a fifteen minute period each day – seven days a week but the bill works out at a thousand forty pound a year (...) there's absolutely no way a residential line should cost that ... (Prisoner, Northern Ireland)

Very few prisons allow children to phone in to the prison to talk to their parents, although some prison staff in Poland reported that they would facilitate such contact in an emergency. Since April 2010, 'medium security' prisoners in Italy have been able to use mobile phones, thereby facilitating two-way contact between parents and their children and, in Denmark, the Prison and Probation Service, is currently conducting a trial project installing mobile phones in cells in an open prison.¹⁹

The vast majority of prisons do not allow the use of internet for communication with families, although some exceptions are made for prisoners whose children are abroad, as was evidenced in Northern Ireland. There are also limited initiatives in place to allow children to e-mail their parents in prison, such as in Maghaberry Prison, Northern Ireland, but the parent can only respond to such communication by using the phone or writing a letter. Where internet contact is allowed, it is closely monitored, raising concerns about the prisoner's and the children's right to privacy. In Denmark, internet access is allowed for some prisoners, especially in open prisons, but this requires a special permit.

Children should be able to communicate with their parents in ways that resemble their normal forms of communication outside. In particular, more should be done to enable children to call their parents in prisons or to contact them using modern technology such as mobile phones or email.

2.4.3 Mothers and babies

The question of mothers and babies in prison poses a particular dilemma in relation to the rights and best interests of the child:

On the one hand, prisons clearly do not provide an appropriate environment for babies and young children, and on the other hand, the forcible separation of mothers and infants is highly undesirable'.²⁰

The general approach advocated by the Parliamentary Assembly of the Council of Europe²¹ is that the overwhelming majority of female offenders with young children

¹⁹ The phones are secured to the wall in cell but allow text messages back and forth, enabling prisoner's children to have regular contact with their imprisoned parent

²⁰ Committee for the Prevention of Torture (CPT), (2000) *10th General Report CPT/Inf.(2000)13* (EN) pt. 28

should be managed in the community, while a more humane approach must be found to those few mothers of young children who have committed serious offences and who must be sentenced to detention. Where babies and young children are imprisoned with their mothers, the welfare of the children should be the paramount concern. This principle is set down in Rule 36 of the European Prison Rules and has been reinforced by the Committee on the Prevention of Torture:

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.²²

Whilst this principle was reflected in all of the case studies, there is no consensus as to the optimum age at which children should not remain with their parents with practice varying from 9 months to 3 years within the studies. The Italian laws, outlined in Chapter 6, are some of the most progressive aimed at reducing the numbers of mothers sent to prison. In addition, the pilot project ICAM, which places the needs of the child at the centre of its existence and practice, presents a potentially radical alternative to mother and baby units in larger prisons. In Denmark, a very special initiative exists with the Engelsborg Halfway house for women who offend, allowing prisoners to stay with their entire family in an environment very similar to ordinary housing, and the family and the children receive help and counselling from community-based professionals.

3. Parole and release

3.1 Temporary release

Opportunities for prisoners to be let out of prison on day release or for a few days' home leave can be crucially important in helping the family as a whole prepare for a prisoner's homecoming. Such opportunities exist in all the case studies, but the extent to which they are embedded in law varies. In Italy, the Gozzini Law 1986 under Article 21, introduced the possibility of leave for sentenced prisoners with good conduct, whereby they could leave the prison to work and return in the evening. During the last three years of the sentence, Article 47 allows for the release of prisoners under the supervision of social services to enable them to be with their children in particular cases. There is also provision for access to alternative sanctions prior to imprisonment, which may promote continuity of the child-parent relationship.

3.2 Release

There is no doubt as to the fact that regardless of whether and how often prisoners have contact with their children, and in what form, it is inevitable that the relationship will change over the course of imprisonment. It is extremely difficult for prisoners to maintain an active parenting role and whilst prisons in Northern Ireland and Italy, and a few in Denmark, provide opportunities for parenting courses and discussion groups, opportunities for imprisoned parents to follow their children's development or be involved in decisions about their lives are restricted due to their imprisonment. On release, many prisoners have to 'learn' how to be parents again and many children

²¹ The Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe (2002) *Mothers and Babies in Prison* Doc. 8762, 9 June 2000

²² The Committee for the Prevention of Torture (CPT) (2000) as above pt. 29

have to get used to having the parent around again. It is a crucial time of adjustment for the whole family and more needs to be done to prepare all parties for being reunited again when the prisoner is released. The evidence suggests that the hopes and desires of children may not be matched by the reality when their parent comes home.

Resettlement plans for prisoners who have children should include the offer of specific support to prepare them to undertake their parental responsibilities on release, alongside support to the families. This approach is reflected in the programme, run by the children's charity, Barnardo's, in Magilligan Prison in Northern Ireland, which brings together prisoners and their partners to look at the difficulties they may face as a family following release and encourages them to look for constructive solutions. In Denmark and in Italy, support in the community is provided through organisations such as SAVN and Bambini, respectively. The significant role played by NGOs in assisting prisoners and their families with resettlement on release is emphasised by the research findings and highlights the need for these organisations to be adequately resourced to facilitate the continuation and expansion of their services.

4. Final conclusion

The rights of children of imprisoned parents are protected under international and European human rights law through the UN Convention on the Rights of the Child and through international and European standards on the respect for family life of prisoners and their family. The human rights framework is in place, and an effective protection of the human rights of the children of imprisoned parents is mainly a question of maximising the potential that lies in children's rights and in the right to respect for family life of the children of imprisoned parents.

The case studies all detail laws and policies that place some focus on prisoner/family relationships. In practice, however, both the quality and quantity of the contact between parents and children depends very much on individual prisons. Examples of good practice can be found in each of the case studies but, unfortunately, these are rarely mainstreamed across the whole prison estate, social services or police services, and it is clear that security and control issues often over-ride children's best interests.

In particular, the results of the studies undertaken indicate that while all four case study states are signatories to the UN Convention on the Rights of the Child, the practice in relation to the situation of children of imprisoned parents does not place sufficient focus on these rights. When dealing with children of imprisoned parents, the perspective of the child entails that:

- the child has a right to be informed about what is going on;
- the child has the right to see his/her imprisoned parent(s) on a regular basis and in a manner that respects his/her physical and moral integrity; and
- the child has a right to be assisted by public authorities that have the obligation to facilitate his/her contact with the imprisoned parent(s).

The main challenge is that children in their own capacity are very seldom in a position to claim their rights, either because they do not know they have such rights or because they have nowhere to address their claim. The most fundamental right – to be in contact with a separated parent – is often undermined by restrictions imposed on the prisoner's contact with the outside world or by the imprisoned parent, themselves,

denying their child access to visit. In addition to the CRC, all states involved in the study are bound by the ECHR. Whilst prisoners are increasingly turning to the European Court of Human Rights to seek redress, very few children have yet taken a case to the Court in their own right and their perspective is rarely taken into account by lawyers. Lawyers must, therefore, enhance the perspective of the children of imprisoned parents in matters, such as access to visits, in order for the best interests of the child to be taken into account in matters which concern them directly or indirectly.

The report, therefore, makes one overall recommendation to all member states of the European Union and the Council of Europe to:

Incorporate the UN Convention on the Rights of the Child into European standards, national laws and practice, with regard to children of imprisoned parents, so as to ensure that children of imprisoned parents are able to maintain contact with their parents; are consulted and receive timely information regarding what has happened to their parent; are free from discrimination on the grounds of the acts of their parent; and have their views taken into account.

While the report refers specifically to children whose parents are imprisoned, there are of course thousands more who are affected by imprisonment of their siblings, grandparents, uncles, aunts and other family members with whom they have a close relationship. The effects and experiences on those children will often be similar to those children whose parent goes to prison. The full recommendations that follow should therefore be considered with this in mind.

Chapter 9: Recommendations to the EU

1. Overall recommendation

Incorporate the UN Convention on the Rights of the Child in relation to children of imprisoned parents into European standards, national laws, and practice so as to ensure that children of imprisoned parents are able to maintain contact with them; are consulted and receive timely information regarding what has happened to their parent; are free from discrimination on the grounds of the acts of their parent; have their views taken into account.

2. Specific recommendations

2.1 Arrest

1. Guidelines should be drawn up regarding how police officers should handle situations where parents are arrested and their children are present. Such guidelines should be aimed at avoiding traumatising children and ensure that up-to-date information is given to children of arrested parents and carers at the point of arrest.
2. Protocols should be developed for police officers in relation to arresting parents and dealing with children who may be present at the time of the arrest; once developed, police officers will require training in implementing them.
3. The arresting officer should be under obligation to identify whether there are children affected by arrest, and a system should be in place to ensure that children are taken care of properly.
4. Procedures should be in place if children are brought to a police station in connection with the arrest of a parent, consistent with children's rights.
5. Procedures should be in place to ensure that the opportunity is given immediately after the arrest for the primary carer to inform their child about what has happened and for this flow of information to be kept open during the entire period of imprisonment, consistent with children's rights.
6. 'Children's/ family officers' should be established within the police.

2.2 Decision to impose remand imprisonment

7. Remand imprisonment of parents should be decided with a primary consideration to the rights and needs of involved children.

2.3 Sentence – decisions regarding the sanction and where to serve the sentence

8. The child's best interest must be considered when a parent is sentenced, with regard to the choice of sanction and, if imprisoned, in the choice of where the sentenced is served to ensure that face-to-face contact with their child can be maintained.
9. The CoE Resolution 1663 of April 2009, regarding women in prison, should be followed and implemented.

2.4 Children visiting imprisoned parents

10. A child should have the right to visit his or her parent in an appropriate setting within one week of the initial imprisonment and frequently thereafter, consistent with children's rights to contact with their imprisoned parent.
11. Minimum EU standards for visiting facilities to create a child-friendly environment should be adopted, incorporating the following:
 - All staff working on visits (including security staff) should be trained in understanding the perspective and needs of children visiting their parent in prison.
 - Clear, easy to grasp and age-appropriate information should be available for children, and those accompanying, about the visits procedures and arrangements, including, for instance, what visitors are allowed to bring into the prison; proof of identity requirements, searching, etc.
 - An age-appropriate selection of toys and activities for girls and boys (including teenagers) and the opportunity of being outside during visits should be provided in the visits area.
 - Toilets and baby-changing facilities should be available during visits.
 - Information material should be available in other languages for children and other family members.
12. Child-friendly facilities should be available upon arrival at prison and children's rights should be taken into account during search procedures.
13. Regular arrangements for parent/child activities for children of prisoners and their parents should be offered in prisons, for example, at least once during every school holiday period.
14. Opportunities should be provided for private parent/child visits for compassionate/special reasons.
15. There should be appropriately trained permanent staff working in the prison visits area.
16. Every prison should have a designated 'Family/ children's officer'.
17. Children's visiting experiences should be evaluated and a 'children's expert/advisory' group established in each prison in order to give voice to the

child's perspective on visiting and maintaining contact with their parent in prison.

18. Arrangements should be made to accompany children to visit where the parent is not available to do so, possibly in partnership with not-for-profit organisations (NGOs).
19. Financial support should be available to families on low income to ensure visits for children.

2.5 Other kinds of contact between children and their imprisoned parents

20. Opportunities for Home Leave should be granted with regard to the needs of children of imprisoned parents.
21. Telephones (including mobile phones) and the internet should be utilised more in the contact between children and their imprisoned parents.
22. Special considerations should be taken with regard to imprisoned parents with children living in foreign countries, to ensure contact can be maintained.
23. Systems should be in place so that visits can be established quickly in emergency situations allowing, for example, an imprisoned parent to visit a hospitalised child.

2.6 Other recommendations for the Prison Service

24. The number of children of prisoners should be systematically registered and used to ensure that contact between the prisoner and his/her child can be maintained; the data should be made publicly accessible.
25. Children should have the possibility to see where their parents live in the prison (that is, the cell – one option is to photograph the cell) so as to reduce fear and anxiety.
26. Recommendations regarding babies and small children living in prison with their imprisoned parents:
 - There should be regular inspections of units where children live with their imprisoned parents.
 - The children should have access to outside areas.
 - Specialist staff in early-years children's education should be employed in these units.
 - Educational or daycare facilities should be available, preferably both within and outside prisons.
 - It must be recognised that the child is not a prisoner and maximum access to the outside community should therefore be ensured.
 - There should be rules regarding supervision of the children.
 - Parenting programs for imprisoned parents who live with their children should be offered.

27. The state should provide adequate alternatives to imprisonment for certain groups of imprisoned parents, for example, halfway houses with special family-sections.
28. Prison regimes should increasingly allow for imprisoned parents to take their part of the parental responsibility, when it is in the child's best interest.
29. Procedures should be in place to ensure that children placed in foster families, or social services care, are able to maintain regular contact with their parent in prison through visits and information exchange.

2.7 (Information) support and guidance

30. Prison regimes should inform, help and support the prisoners in their parenting in order to benefit the children, including offering parenting groups, education and information.
31. Prisoners, their relatives and children should be offered appropriate, up-to-date and relevant information guidance and support from the arrest to release and resettlement of the imprisoned parent and his/her return to the family. Such information should be made available through websites and other interactive media.

2.8 Help from civil society organisations

32. The important role that not-for-profit (NGO) organisations provide in supporting children and families of prisoners should be recognised and financially supported.
33. More support services should be available for children with parents in prison and their family.
34. Where possible, all of the above recommendations should apply to all children affected by imprisonment (for example, siblings, etc.).

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Annexes

Annex 1: Overview of advocacy and awareness-raising in Denmark

In the Danish DIHR research regarding children of imprisoned parents, we have, from the outset, worked towards creating actual change through a combination of fundamental research, dialogue, advocacy, and awareness-raising.

The research is presented in the Danish DIHR Study and below is an overview of the work we have done to implement reforms:

1. Published research findings

DIHR published our research findings in May 2010, in the book, “Når straffen rammer uskyldige. Børn af fængslede i Danmark” (When the Innocent are Punished. Children of Imprisoned Parents in Denmark), by Gyldendal (312 pages). In this book, the whole process from the arrest of a parent, through pre-trial detention, to imprisonment and release is analyzed from the perspective of the needs and the rights of the child, and 27 concrete recommendations for reforms are delivered.

The second book from DIHR regarding children of imprisoned parents was published in January 2011 (126 pages). It is an educational book, with individual chapters targeting the police, the Prison Service, and the Social Services, as well as imprisoned parents and their relatives. We are excited that the Police Academy and the Academy of Prison Officers have already shown great interest in using the book in the training of future policemen and prison guards.

DIHR has also contributed to the book, “Children of Prisoners. A story about the Engelsborg Family House”, published October 2009. DIHR wrote a chapter describing the human rights of children of prisoners, their problems and needs.

2. Media strategy

The study of children of imprisoned parents in Denmark has generated continuous interest from the media.

The Danish newspapers have printed articles about the situation of children of imprisoned parents and the DIHR study. The DIHR has given statements and interviews in TV and radio programs.

When DIHR's research findings were published in the book, “Når straffen rammer uskyldige. Børn af fængslede i Danmark” (When the Innocent are Punished. Children of Imprisoned Parents in Denmark), it was followed by extra media attention. In event of the publishing, DIHR wrote a comprehensive debate article in one of the big national papers, and 28 newspapers – and among them all the big national newspapers – wrote about children of prisoners and the Danish DIHR study. DIHR participated in two national TV programs – a long interview about the DIHR Study and an interview together with a child who has a father in prison. The study findings were also mentioned several times in the national radio newscast and DIHR was interviewed here as well.

3. Policy-level dialogue

Politicians have shown an interest in the DIHR study and in making conditions better for children of imprisoned parents. Politicians from different political parties have met with DIHR to hear about our research and they have subsequently made statements in the media and suggestions at the parliament.

A substantial political response came in the form of a meeting on 20 August 2010 with the Minister of Justice, Lars Barfoed, and the Minister for Social Affairs, Benedikte Kjær, who both responded very positively to DIHR's suggestions for reform.

4. Involvement of public authorities

Throughout the project, our experience has been that the Prison Service has made several changes due to our suggestions. The changes have been made both inside the prisons and on the policy level in the form of initiatives towards establishing a Prison Service "Children's policy" based on, among other things, DIHR recommendations.

DIHR has created a very good cooperation with The Prison Service, and many meetings have taken place between DIHR and the Department of Prison and Probation Service regarding the Prison Services policy on children, DIHR's suggestions for reforms and the new DIHR project, "Children's officers" (see below).

A new national project concerning children of imprisoned parents, funded by the Lego Foundation (Ole Kirks fond), began in 2010. This project has taken us even further into the actual prisons, where we are now creating so-called "Children's officers" who work on securing the rights and needs of children of imprisoned parents. The project was 'kicked off' by a one-day meeting on 1 September 2010 between DIHR, the Department of Prison and Probation Service, the directors and the announced "Children's officers" from the participating institutions. We work together with very reform oriented prison staff and, for example, held a successful one-week course at DIHR from 20-24 September 2010, where prison officers and social workers from different prisons in Denmark participated. The teachers were from DIHR, from the Department of Prison and Probation Service, from prison institutions with good experience in making a children's policy, The Police Academy, an organization supporting prisoner's relatives and the psychiatric sector where they have experience with "Children's officers". We also took a one-day field trip to a Swedish prison to get information and input because there are "Children's officers" in all of the prison institutions in Sweden. The course was followed by another "Children's officers" course which took place on 9-11 February 2011. The main purpose of this specific course was to train the Children's Officers in arranging parent groups and training for parents in the prisons. The course was held at the Danish Institute for Human Rights but coordinated and facilitated together with a family therapist specialising in prison families.

On 9 April 2009, DIHR met with the Center for Familieudvikling (an NGO working with preserving families) and discussed their experience in arranging fathers' groups in prisons. Fathers' groups will be a part of the 'children's officers' project, and an important theme at the course in February 2011.

Influenced by the DIHR work and research, the Danish Prison Service has created a 'Childrens Forum' consisting of children experts and human rights experts, and DIHR is represented. The Childrens Forum meets several times a year and discusses issues in the Prison Service that affects the prisoners' children. The Children Forum met on 22

September 2009, 9 December 2009 and 9 June 2010 (presentation of the DIHR study regarding children of prisoners), 8 December 2010 and 17 March 2011.

On 12 March 2010, the deputy director of the Danish Prison and Probation Service, Annette Esdorf, visited DIHR and, among other things, discussed the Prison Service's policy regarding children.

On 3 September 2010, DIHR met with a family worker from the halfway house, Familiehuset Engelsborg, who has family therapy groups for prisoners, adult relatives of prisoners and children of prisoners. She worked with DIHR on the second children's officers course in February 2011.

DIHR also has a good dialogue and cooperation with the Danish police and the Police Academy. DIHR has held meetings with the police about police work and training of police officers in relation to children of prisoners (25 November 2009, 20 January 2010) and they are now using our latest educational book at the Police Academy.

5. Institution visits

During the EU project period:

24 June 2010: Visit to Vridsløselille Statsfængsel (closed prison)

2 July 2010: Visit to Vejle Arrest (remand prison)

16 July 2010: Visit to Frederikshavns Arrest (remand prison)

17 September 2010: Visit to Horserød Statsfængsel (open prison)

11 November 2010: Visit to Engelsborg Familie House (halfway house)

9 February 2011: Visit to Herstedvester statsfængsel (closed prison)

In addition, from 2007 to 2010, we conducted research visits to 14 Danish prisons. Five of these were predominantly closed prisons, three open prisons, three halfway houses and three were remand prisons (some prisons have both closed and remand, or open and remand). We also visited six relevant prisons in Sweden, Italy and the UK.

6. (participating in and organising) Conferences and other events

In cooperation with Børnerådet (The National Council for Children in Denmark) and SAVN (the organization in Denmark supporting prisoners' relatives), DIHR has previously held a conference for Danish police, prison staff and social workers and is now planning a Nordic conference regarding children of imprisoned parents in Scandinavia. The conference will focus mainly on the NGOs supporting prisoners' relatives in the three Scandinavian countries and the NGOs cooperation with the Prison Service. Representatives from the NGOs and from the Prison Service in Sweden, Norway and Denmark will attend as well as the Children's Ombudsman institutions in Norway and Sweden. On 7 April 2010, Børnerådet, SAVN and DIHR had a one-day meeting arranging the conference, and another meeting was held on 9 June 2010 and in February 2011. The conference will take place May 2011.

On 18 November 2009, DIHR participated in a conference regarding children of prisoners, held by SFI (The Danish National Centre for Social Research). Among the

speakers was Professor in criminology and psychiatry from University of Cambridge, David Farrington, a representative from the Department of Prison and Probation Service and DIHR's Senior research fellow, Peter Scharff Smith.

On 12 January 2010, DIHR participated in the board meeting of Halmøhus, a new initiative to establish more halfway houses in Denmark.

On 18 March 2010, DIHR participated in a conference regarding vulnerable children in Denmark, held at the Danish Parliament (Folketinget) by Center for Familieudvikling (an NGO working to preserve families).

On 11 May 2010, DIHR gave a presentation about children of imprisoned parents at a conference in Oslo, Norway, organised by the Scandinavian Research Council for Criminology.

On 16 February 2011, DIHR gave a presentation about children of imprisoned parents for the society for younger Danish criminologists.

On 29 March 2011, DIHR participated in 'the day of crime prevention' organised by the Danish Council for crime prevention. DIHR's work with children of imprisoned parents was nominated for the Danish crime prevention prize and DIHR presented this work at the conference.

On 12 April 2011, DIHR gave a presentation about children of imprisoned parents for the Danish society for Criminology.

Annex 2: Overview of advocacy and awareness-raising in Northern Ireland

1. Publication and dissemination of research findings

At least 500 printed copies of this report will be distributed within Northern Ireland. The report will be distributed to all of those organisations involved in the Interagency Group for the Families of Prisoners. Copies will be sent to each prison library. The report will be distributed to political representatives, in particular to the members of the Justice Committee of the Northern Ireland Assembly and to the Minister for Justice. All organisations which participated in the study will receive printed copies for distribution. The research will also be made available in electronic form, including through university databases of research such as the Ulster Institutional Repository. At Queens University Belfast the report will be accessible on the website of the Childhood, Transition and Social Justice Initiative. The authors of the Northern Ireland case study will give presentations on the research at local, national and international conferences. For example, a presentation will be given at the 7th annual North-South Irish Criminology conference at the Institute of Technology, Sligo. The researchers will also disseminate the findings to professionals and families through presentations at meetings and seminars.

A separate report on the situation for children with imprisoned parents and other family members in Northern Ireland will be published in autumn 2011.

The researchers will also disseminate the research findings through the publication of magazine and academic journal articles, and book chapters based on the research.

2. Involvement of public authorities, non-governmental organisations and civil society

This research has been participative in nature throughout and could not have been completed effectively without the involvement of a range of organisations and individuals including children and families, prisoners and those working on the issues relating to families affected by imprisonment. In particular the Interagency Group on Prisoners' Families has been supportive of the research. The Interagency Group is comprised of representatives of statutory bodies, including the prison service, and non-governmental organisations.

The researchers gave a presentation on the research at the annual Interagency Group on Prisoners' Families networking day in Belfast, December 2009 asking for support with the research. The project also supported the work of the Interagency Group on Families of Prisoners in co-hosting the annual networking day in Belfast in November 2010. The project provided speakers and venue for the day which was attended by approximately 35 representatives from the statutory and non-governmental sectors. Debbie Cowley, Director of Action for Prisoners Families shared experiences from England with professionals in Northern Ireland. Linda Moore presented the formative conclusions and recommendations from this research, and these were discussed in workshops from which ideas were fed back into the project. Discussion included the role of family officers, visiting arrangements, financial support for families and difficulties for families in communities. Feedback from the day helped to inform our findings and recommendations and this was in turn fed into a further meeting of the Interagency Group in March 2011, at which Dr Nancy Loucks from Families Outside

informed participants about developments in Scotland for children with imprisoned parents. Una Convery presented findings from this research which provided the basis for discussion.

The researchers participated on several occasions with a family group organised by a prison service family officer, based in Limavady and, following a focus group discussion with children, the project supported a family fun day for parents and children of prisoners at Barrontop farm in August 2010. Researchers also participated in a family group meeting organised by the same family officer in Ballymena in February 2011 and attended two meetings of the parent support group at Hydebank Wood prison, most recently in January 2011. The project supported family days organised by NIACRO in Newry and Derry, also in August 2010. Focus groups were conducted with families in Limavady and Newry.

A session on Children with Imprisoned Parents was organised as part of the annual North-South Irish Criminology Conference held at the University of Ulster in June 2010. Lucy Gampell representing EUROCHIPS, Owen Gill from Barnardos South-West (England) and Peter Scharff Smith from the Danish Institute for Human Rights gave presentations on the situation for children with imprisoned parents across Europe, and in the United Kingdom and Denmark. The session was attended by academics as well as representatives from statutory and non-governmental organisations.

During fieldwork the researchers met with or interviewed representatives of the following non-governmental organisations: Action for Children, Barnardos, Coiste, Extern, Include Youth, NIACRO, Prison Fellowship, Society of Friends, (Quakers). They also met representatives from the Northern Ireland Human Rights Commission and with representatives from the Probation Board for Northern Ireland, the Northern Ireland Prison Service, the Police Service of Northern Ireland, prison chaplains and the Regulation and Quality Improvement Authority. The researchers were well supported in conducting the research by Family Support Officers in Magilligan and Maghaberry Prisons.

Researchers met with chairs of each of the three Independent Monitoring Boards (independent volunteers who regularly visit prisons) in January 2011.

The researchers visited each of the North's three prisons on a number of occasions, including observation of ordinary visits, child-centred visits and children's parties at Maghaberry and Magilligan. They also visited the independent visitors' centres in each prison.

3. Policy-level dialogue

During the period in which the project was running, policing and criminal justice functions were devolved from Westminster to the Northern Ireland government at Stormont. A review of the prison system in Northern Ireland was established by the new Minister for Justice, David Ford and headed by Dame Anne Owers. The researchers have met on several occasions with the Review Team to raise, *inter alia*, issues relating to children's rights and imprisonment, including the situation for families of prisoners. The research team was involved in organising a symposium in November 2010 for academics to present findings from their research to the Prison Review Team. The review team issued its first report in February 2011 and will be publishing its final report in the summer. The report of this research on children with imprisoned parents will be distributed to members of the review team.

Annex 3: Overview of advocacy and awareness-raising in Italy

1. Overview

The advocacy work outlined below has taken place alongside the DIHR research carried out by Bambinisenzasbarre in Italy and has achieved some really concrete outcomes in relation to the engaging in dialogue at a policy-level and involvement of the statutory authorities. This has been helped by the improved awareness within the prisons administration department and Ministry of Justice. In particular this can be seen by:

1. the strengthening of our relationship with the heads of the Lombardy Prison Service leading to the development of new pilot project work; and
2. the development of the new law (approved in March 2011) for mothers in prison with children under 10 years, that modifies the original law from March 2001 (Finocchiaro Law). This law, despite ensuring that there was a legal requirement to take account of the issue of mothers in prison, immediately demonstrated its limitations and required amendments. The lobbying work and commitment to these changes has taken 10 years, finally resulting in the new law which certainly improves the chances of avoiding children being imprisoned with their mothers, even if it does not completely prevent it – as the law intends.

2. Published research findings

CRC 2009, Annual Report on The CRC (Convention on the Rights of the Child) in Italy (Chapter 4), under Save the Children coordination, focused just on the research issues.

October 2010 – University la Bicocca, Milan – Distribution of two booklets with the first draft of the research findings during two lessons by Lia Sacerdote.

3. Media strategy and promotional activity

Since the start of this initiative, information on the DIHR project and its objectives regarding the rights of children with imprisoned parents and improving their treatment by the criminal justice system has been promoted through the Bambinisenzasbarre website.

We developed our main message to media and public opinion, as follows:

If the parents are imprisoned, the child's right is expressed through safeguarding the bond and the right to visit their imprisoned parent, taking into account the fact that hundreds of thousands of European children currently step into a prison every day, a totally 'alien' and 'hostile' place for a child.

It is also important to underline that children need this bond to grow up into healthy, viable adults who reach their full potential. Social and psychological research demonstrates that the parent, even if imprisoned, represents the emotional root basis

on which the child builds his/her own identity, and can also represents the potential example not to follow in order to make different choices in life. Great care should be taken in creating and preparing information and communications for the general public, particularly the media, on local, national and European levels. Campaigns should be based on strong work experience in the field and on solid theoretical bases.

Over the duration of the project we have engaged in the following media activities:

- having a display stand at ‘*Fa’ la cosa giusta!*’ show (“*Do the right thing!*”) three-day show and conference of National and International NGO and not-for-profit organizations in March 2010; accompanied by the distribution of press releases and a leaflet about the DIHR Research;
- participation in the first “European Children of Prisoners’ Week”: a campaign of action organised through EUROCHIPS and many of its member organisations. We produced press releases mentioning the DIHR Research and its issues; undertook national and local TV interviews; and mounted an exhibition of paintings and drawings of children with imprisoned parents. June 2010;
- production of seven video interviews (in English) to the main researchers working on the DIHR Research about the aims and problems faced. These interviews have been used in the following months (October 2010 – March 2011) as awareness-raising tools at several Italian meetings and events. They are planned for use in other media work during all 2011;
- January 2011– Roberto Saviano journalist and writer: letter for raising awareness on the DIHR Research issues (Roberto Saviano is actually the most famous and committed Italian writer fighting against Mafia and in favor of civil rights, especially connected in the criminal youth in the southern part of Italy: because of his courageous stance, since 2006, the Italian Minister of the Interior has granted him a permanent police escort);
- planning for the second European Children of Prisoners’ Week and associated campaign. We will be holding press conferences with Parliament Representatives and the Minister of Justice, with a second Exhibition of paintings and drawings of children with imprisoned parents related to the DIHR research findings: the exhibition is planned to become a roadshow in Lombardy, in Rome and other places not yet defined, with a workshop in each stop.

4. Policy-level dialogue

- 5 December 2009 – Beginning of a series of meetings with the head of the Lombardy Region Prison Department, Regional Superintendency for Lombardy, Mr Luigi Pagano: presentation of the DIHR research and its targets in order to organize some focus groups with the penitentiary social workers.
- March 2010 – Meeting with the regional head (Superintendent) of Lombardy Region Department of Penitentiary Administration. Following this, the

Superintendent, Mr Luigi Pagano, wrote an official letter to the Ministry of Justice in Rome in support of DIHR Children of Imprisoned Parents Research.

- March 2010 & January 2011 – Meetings in Rome with experts in women in prison to set up and, later, to consolidate lobbying actions toward Italian Parliament. Again, the DIHR project has been explained and deeply discussed. Two new meetings have been scheduled after July 2011.
- 14 April 2010 – Meeting in Rome at the Ministry of Justice, Councillor Sebastiano Ardita, General Management of the Detainees and of the Treatment Section, and Lia Sacerdote, President of Bambinisenzasbarre, after which we received the final official approval from the Justice Ministry in Rome to carry out our research across the whole of Italy: 'Full collaboration is granted in view of the best result of the survey among the penitentiary bodies and for the fulfillment of the study activity in its whole'.

5. Involvement of public authorities

- 13 October 2009 – The first of many official meetings with the Superintendency of the Lombardy Penitentiary Administration (Dr. Giovanna Longo, responsible for child development) in order to organize and to plan the research activities to be carried out inside the three Milan prisons (three prisons) and, Lombardy-wide, the research.
- 3 November 2009 – Awareness meeting and presentation of the research project to the General Director, deputy of General Director, prison officers and executive officers of the prison, police, education workers and volunteers in order to plan the research phase in Bollate prison.
- 23 June 2010 – Seminar in San Vittore prison (Milan) for the Lombard prison staff (educationalists, social workers and prison officers) on awareness-raising on DIHR Research. Questionnaires were distributed and an exchange of information was started. The results were later collected and analysed thanks to the cooperation with PRAP (Lombardy Prisons Superintendency).
- 8-9 October 2010 – Meetings arranged for prison governors, educators and imprisoned parents of the Bollate and ICAM (Milan) prisons to make them understand and be aware of the research objectives, meeting directly researchers and staff involved in the project.
- In December 2009, the Justice Ministry issued a circular to all prisons (PEA 16/2007) – Prison treatment and parenthood – guidance for prisons on the treatment of child visiting their parent in prison. This mentions for the first time that prisons must pay attention to the children of prisoners, shifting the focus so that attention is given to the needs of children and the family in their own right.

The Head of the regional Prison Service for Lombardy fully took on board the intentions of the circular and used the DIHR project carried out by Bambinisenzasbarre as the

catalyst for establishing an *Educational Thematic Working Group*. Members of this interagency working and research group, which is under the supervision of the Head of the regional Prison service and Children's services, includes:

- Bambinisenzasbarre
- representatives of the Court and social services for adults
- representatives from the probation service (responsible for supervising non-custodial measures)
- prison officers

It is hoped that in the future representatives from Family Court and the related Social Services will become involved in the anticipation of their new executive powers.

One of the first actions of this group is delivering training to prison officers, teachers and social workers from the 19 prisons in Lombardy. The first sessions took place in four areas in March 2011 with the second phase due in September 2011. The main theme is '*How to combine security needs with welcoming of children visiting prison*'.

6. Institution visits

19 December 2009, 20 March 2010, 3 July 2010 – Special focus groups organised by Bambini with prisoners in the main Milan prison, San Vittore (arrest and pre-trial); discussions also took place with the families of the prisoners.

25 March 2010 – Visit to Le Molinette Prison, Turin (close prison).

January-July 2010 – Separate female and male prisoner focus groups conducted by Bambini personnel in the daily visits (in the two main Milan prison: San Vittore (arrest and pre-trial) and Bollate (open)).

28 May 2010 – Visit at La Giudecca female close prison, Venice (North-East Italy).

June-July 2010 – Collecting of data from the 19 prisons in Lombardy (arrest prisons, pre-trial detention prisons, closed prisons, soft prisons for mothers with children under 3 years, open prison).

January-December 2010 – Focus groups organised by Bambini with fathers in Bollate prison.

7. Conferences and other events

Over the course of the project, Bambini staff have given presentations which included reference to the research study at a number of significant conferences and events in Milan and elsewhere:

- 4-5 November 2009 – Catholic University, Milan – Conference on "Minori, Giustizia, Sicurezza" ("Minors, Justice, Security") with 150 delegates;
- 5-7 November 2009 – Università Bicocca of Milan – Conference on "Il diritto

di essere bambini” (“The right to be children”) at the Triennale with 50 delegates;

- 10 November 2009 – Università Bicocca of Milan – DIHR Research issues and objectives presentation undertaken during a meeting with the Bambinisenzasbarre (attending: 100 students of the fifth year of Psychology);
- 22-24 February 2010 – Budapest, *European Conference on Prison Education, Pathways to Inclusion*. Bambinisenzasbarre was the only Italian association invited by the EU;
- 8 June 2010, Naples – Bambinisenzasbarre participated in the congress “*Lifelong Learning Program: contribution to education and professional training in the social inclusion*”;
- September 2011 – Planned international conference on the DIHR research results and presentation of the research book. Speakers invited in the panels: politicians, representatives of the Italian and European Parliament, Italian Minister of Justice, Italian Secretary of Family Policy, Council of Europe members, European Commission members, penitentiary administration experts, research centers, professionals (psychologists, educators), media columnists. The conference will be televised on air and on the internet.

8. Publications, educational material and courses

March 2011 – Publication of a book (paper and e-book) with all the statistics and graphs of the Italian survey done for the DIHR Research, book to be distributed to all the Italian prisons (216) and to all the penitentiary offices.

March-May 2011 – Publication of a book (paper and e-book) with all the interviews (from audio recordings) and talks with imprisoned parents (male and female), a selection of which have been used for the publication of a book (paper and e-book).

March-December 2011 – Two courses of 16 lessons, each one for 100 prison officers and prison social workers, all based on the data, results, material and recommendations of the DIHR Research book.

May-July 2011 – Publication of a book (paper and e-book) with the complete analysis of the paintings and drawings, a selection of which have been used for the DIHR research book.

Annex 4: Overview of advocacy and awareness-raising in Poland

Every interview, meeting and discussion that has taken place throughout the course of the project has had an awareness-raising effect in and of itself. Historically, Poland has contributed significantly to the development and promotion of children's rights, Dr. Ludwik Rajchman, Polish delegate to the UNRRA Council in 1946, having co-founded UNICEF and served as the body's first president. From the outset of the project, one aspect of all of our meetings was a focus on children's rights in Poland, specifically the rights of children with imprisoned parents to maintain contact with an incarcerated parent.

Our advocacy work has included:

- Policy-level dialogu
- Involvement of public authorities
- Involvement of stakeholders (likeminded NGOs, associations)
- Institution visits
- Conferences and other events

1. Policy-level dialogue

Policy-level dialogue was established between EUROCHIPS and the Plenipotentiary in Torun which oversees social welfare associations for the Kujawsko-Pomorskie region. Dialogue focused on the CIP research project, its potential impact, and ways in which awareness on the issue of children with imprisoned parents can be raised – one event being a conference that then-partner, Second Chance Foundation, was scheduled to organise in the autumn of 2010. The Plenipotentiary demonstrated an interest in the CIP study and in improving conditions for children with imprisoned parents in Poland. A television interview by a regional station involving EUROCHIPS and the Plenipotentiary representatives about children with imprisoned parents in Poland took place after this meeting.

EUROCHIPS also organised a meeting with Biuro Rzecznika Praw Dziecka, the Children's Ombudsman's Office in Warsaw, (18 March 2010) to discuss how they promote the rights of children with imprisoned parents and their experience with this group of children. Ombudspersons are often faced with making key decisions involving prisoners' children's cases brought to them and are often at a loss for guidance on how to proceed. They look forward to having a series of recommendations that they can draw upon when making these kinds of decisions. Dialogue with the Ombudsman's Office has continued throughout the project – key to the future, given that Marek Michalak / Ombudsman for Children, has been given expanded powers by the Polish government and has been voted President of the European Network of Ombudspersons for Children (ENOC), beginning September 2011. ENOC links independent offices for children in 29 countries in Europe, with the aim of raising awareness on EU projects like the DIHR study and of the importance of children with

imprisoned parents.

2. Involvement of public authorities

Throughout the project, we found a willingness on the part of the Prison Service to discuss the issue of children with imprisoned parents within their scope and context and to explore ways in which to improve visits conditions, support services and other mechanisms for these children. Meetings took place between EUROCHIPS and the Correctional services, Gdansk (15 March 2010). There were also meetings with the Torun Police Department, including discussions with arresting officers and the director of the Police Department (17 March 2010) regarding the Police Department's attitudes toward children present when a parent is arrested; police protocol when this situation arises; child-friendly measures; and how the situation for children could be improved. We visited the child-friendly "blue room", where children who are witnesses to an incident are questioned; it is also used as a kind of waiting room for children who are present at an arrest, while arrangements can be made for them, such as finding carers, etc. In addition, we had telephone contact with Children's Ombudsman's Office Warsaw.

3. Involvement of stakeholders (likeminded NGOs, associations)

EUROCHIPS brought Fundacja Dzieci Niczyje (Nobody's Children Foundation Poland) into the project following a series of discussions and meetings with the Director of International Cooperation for Dzieci Niczyje (March 2010, 17 May 2010, 3 June 2010). Fundacja Dzieci Niczyje (FDN), a very well-respected NGO in Poland (for further information, see www.fdn.pl). FDN is a huge organisation with 70 staff members, doing highly professional work. Whilst it does not currently have a remit for working with prisoners' children, it has expressed interest in exploring the subject. The process leading to FDN's involvement in the CIP research was a great awareness-raising exercise in itself. Although FDN is unable to set up a programme for prisoners' children, it has come into frequent contact with children with imprisoned parents who have been victims of abuse. FDN is seeking guidance on what approach is best, and show understanding of the importance of the topic.

4. Institution visits

- 15 March 2010 – Remand prison for women in Gdansk
- 16 March 2010 – Prison in Sztum: Fathers' group; Visiting room
- 19 March 2010 – AS Warsaw – Mokotów (remand prison)
- 15 November 2010 – ZK Zytkowice (sentence prison; male)
- 17 November 2010 – Director of Warsaw District Prison Services
- 18 November 2010 – AS Warsaw – Mokotow (remand prison; male)
- 19 November 2010 – AS Bialoleka (remand prison; male)
- 19 November 2010 – ZK Bialoleka (sentence prison; male)
- 22 November 2010 – AS Sluzewiec (remand prison; male)
- 24 November 2010 – ZK Warsaw – Grochow (sentence prison; female and male)
- 25 November 2010 – AS Radom and OZ Pionki (remand prison; male)
- 27 December 2010 – OPS Praga Południe in Warsaw (Social services)
- 29 December 2010 – Orphanage no. 11 in Warsaw

- 12-13 January 2011 – OPS Mokotów in Warsaw (Social services)
- 14 January 2011 – OPS Śródmieście in Warsaw (Social services)
- Meetings with Police: Pełnomocnik Komendanta Głównego Policji ds. Ochrony Praw Człowieka mł. insp. Krzysztof Łaszkiewicz – and we conducted together the Police part of project with six questionnaires filled in by Warsaw's patrol intervention officers

5. Conferences and other events

With the co-operation of Fundacja Slawek (<http://www.offradio.nazwa.pl/fundacja/glowna.html>), EUROCHIPS organised a small-scale seminar and exhibition of children's artwork in Warsaw in June 2010. Entitled, "Maintaining the Bond between Children and Imprisoned Parents: European Perspectives", the event involved professionals from France and Belgium who specialise in parenting issues for prisoners, support groups for imprisoned parents, making prisons child-friendly, and young children living with imprisoned mothers. The seminar was timed to coincide with EUROCHIPS' National Awareness Week for Prisoners' Children (1-7 June 2010). The seminar was also intended to provide a good framework for highlighting the importance of new legislation in Poland¹ that reinforces the imprisoned parent's right to maintain contact with his or her child. Authorities from Warszawa-Mokotow Remand Prison attended the seminar. Fundacja Slawek put together an exhibition of artwork by children with imprisoned parents. Fundacja Slawek are involved in organising special family day visits (Father's Day, Christmas) at the Warsaw Prisons. They launched a book and tape project for prisoners' children in June 2010.

EUROCHIPS also travelled to Grudziąz, a prison where young children live with imprisoned mothers. This, too, was an awareness-raising event with the exchange of ideas and good practice between on-site professionals and EUROCHIPS members.

¹ cf Chapter on Polish research

Annex 5: Overview of advocacy and awareness-raising on the European level

Throughout the course of the project, EUROCHIPS has worked on laying the groundwork for achieving three fundamental objectives:

1. raise awareness on both children with imprisoned parents and on the DIHR study;
2. improve norms and standards; and
3. impact practice, foster interagency cooperation.

As the only NGO with a discrete remit to work on the needs of children with a parent in prison, EUROCHIPS is regularly involved in policy exchange, seminars and meetings at a European level. Below, is an overview of the initiatives we have implemented to lay the groundwork and ultimately achieve the changes needed, as identified through this project.

1. Published reports

EUROCHIPS included mention of the DIHR study as part of the Interim and Annual Reports 2010/2011 submitted to the European Union for the FP7 Framework Programme study, 'Children of Imprisoned Parents, Mitigations and Services to Strengthen Mental Health' (acronym: COPING). EUROCHIPS highlighted the DIHR report as being another current EU-funded study on the subject of prisoners' children that is highly compatible with COPING, which runs from 2010 to 2013, and is led by the University of Huddersfield. The transnational COPING consortium includes universities and NGOs from Romania, Germany, the UK and Sweden, as well as two pan-European umbrella groups: EUROCHIPS and the Quaker United Nations Organisation (QUONO).

In addition, EUROCHIPS disseminated information on the DIHR study and its child's rights objectives for improving the lives of children with imprisoned parents, via its online newsletter. The DIHR news item (see below) was disseminated to over 900 likeminded policymakers, stakeholders and media figures, including relevant potential stakeholders, including EU and UN bodies throughout Europe and the world (April 2010).



2. Media strategy

EUROCHIPS' mission is to work on behalf of children with a parent in prison by raising awareness on the very existence of this group of children, on the numbers of children separated from an imprisoned parent throughout Europe, on the average length of prison sentences in various countries – which shed light on the period of separation between the parent and child, etc. In order to maximise awareness-raising and galvanise the media on the subject, EUROCHIPS launched an annual week-long campaign in 2010 – 'European Prisoners' Children's Week' (EPCW) – featuring national events concurrently implemented throughout Europe to raise awareness of prisoners' children and their special needs. The DIHR study was promoted as part of EPCW; the EPCW platform served as an indirect dissemination vehicle for DIHR through a campaign information page featuring the DIHR logo on the ECH website. The campaign information page provided general information about the children of imprisoned parents and further online tools, such as a specially designed e-card and e-banners with the campaign image, for partners and stakeholders to post temporarily on their own websites. According to Google analytics, the e-card was sent 491 times. The annual EPCW will provide a yearly forum for promoting DIHR results and for underscoring the importance of scientifically based child-centred research on prisoners' children. In June 2011, EPCW will target the European Parliament with a series of recommendations that will highlight to MEPs that the issue of prisoners' children is an issue impacting on public health, security and social exclusion; that services and interventions need to be implemented for children visiting prisons; and that national observatories on prisoners' children, crucial for information-gathering need to be established in each country and are crucial for gathering information on this group of invisible children. The CIP study will provide empirical evidence of the specific needs of prisoners' children in relation to the neglect of their rights and of the importance of services and interventions, adding weight to any kind of effort to lobby on behalf of this group of children.

3. Policy-level dialogue

EUROCHIPS has established dialogue with several Children's Ombudsmen throughout Europe (France, Iceland, Cyprus, UK, Norway, Greece and Poland), highlighting the existence of the project and the importance of children with imprisoned parents. Several ombudspersons have expressed interest in the DIHR study and in making conditions better for children of imprisoned parents. Ombudspersons are often faced with making key decisions involving prisoners' children's cases brought to them and are often at a loss for guidance on how to proceed. They look forward to having a series of recommendations that they can draw upon when making these kinds of decisions.

To further this dialogue, EUROCHIPS attended the fourteenth annual conference and general assembly meeting in 2010 of the European Network of Ombudspersons for Children (ENOC), which links independent offices for children in 29 countries in Europe, with the aim of raising awareness on EU projects like the DIHR study and of the importance of children with imprisoned parents. During the 2010 conference and general assembly, held in Strasbourg, six of the countries in attendance indicated that children with imprisoned parents was a priority for their activities that in 2010. Three additional countries expressed their interest in issues concerning this group of children. ENOC works to encourage the fullest possible implementation of the UN Convention

on the Rights of the Child. Some Children's Ombudspersons have a mandate to monitor and report on prison conditions. Key figures from the Council of Europe and the European Commission were present at the Strasbourg meeting, as well as the Vice President of the Committee for the Rights of the Child, Jean Zermatten, who spoke about the conception and implementation of Article 12 of the UN Convention on the Rights of the Child, dealing with the issue of child participation.

In addition to the Ombudspersons mentioned above, ECH has disseminated information on prisoners' children and the DIHR project to key figures on the European scene throughout the project. These include the Council of Europe (Head of the Children's Rights Policy Division) and the European Parliament, as well as European Commission authorities overseeing the FP7 Framework Project, as stipulated above. ECH intends to involve further the previous bodies in the organisation of the Brussels-based end-of-project event.

5. (participating in and organising) Conferences and other events

EUROCHIPS Conference, May 2010: 'Children With Imprisoned Parents: Sharing Experience on Best Practice', Oslo. The DIHR study was presented in a plenary session slot. Stakeholders and policymakers included Children's Ombudsman's Offices Norway and Croatia, Norwegian Justice Ministry, prison governors. (May 2010).

In June 2010, EUROCHIPS and the DIHR presented a seminar on the project at the Irish Criminology Conference in Belfast. In addition to delegates from both Eire and Northern Ireland, the conference attracted a number of international participants who expressed interest in the interim findings of the project and the work being undertaken to draw attention to the rights of children of prisoners.

Information on the study was disseminated at the 14th annual conference of the European Network of Ombudspersons for Children in Strasbourg (Oct 2010) entitled, 'Listening to children and involving them in the promotion and implementation of their rights'. The annual conference included distribution of an overview of the DIHR study.

In addition, EUROCHIPS gave a talk about the situation of imprisoned fathers throughout Europe during a plenary presentation at a national conference in France entitled, 'Supporting Vulnerable Fathers: Fathers in Prison' organised by the Fédération des Relais Enfants Parents in Paris. The presentation highlighted the DIHR study as part of pioneering research and EU initiatives for children with imprisoned parents (Dec 2010). EUROCHIPS also presented an overview of the situation of children with imprisoned parents in Europe to the Executive Director of the Bernard van Leer Foundation, with specific mention of the DIHR project and its objectives (January 2011).

Finally, during a Workshop on Resettlement and Family Ties, organized by EXOCOP of Germany and the European Social Fund in Ljubljana, Slovenia, promotion of the importance of maintaining ties to facilitate resettlement is being underscored, with a promotion of the DIHR study and support initiatives it will be recommending (March 2011).

Annex 6: Drawings and notes from the Spazio Giallo: case study, Johnny, age 4

By Fiorenzo Fioretta and Stefania Benvenuti

26 September 2009

Johnny, 4, comes to the Spazio Giallo prior to the first visit with his imprisoned dad. He is with his mother, Daniela.

Johnny does not seem intimidated by the unfamiliar setting, but self-confident and 'more grown up' than children of his age. He likes to draw and his unsettling fantasy world immediately becomes apparent. Using a black magic marker, he draws very intense figures. His hand with claws is the first drawing.



'What's most important is having big hands and making them grow quickly.'. Johnny has been told a lie that his father works at the police car wash service and that Johnny is not allowed to help his father until his hands are as big as his dad's and he'll be able to wear suitable work gloves.

He then draws a figure of a man with a red magic marker. It is a simple figure, with a green face and brown coat. But the man has two large hands with claws.



The drawings are inspired by Freddy Krueger, the fictional horror monster from the *Nightmare on Elm Street* series, popular in the 1980s, when his young mother was just about his age. Krueger, as Johnny explains, has claws attached to his fingers. His face is burnt and he is mean because he kills people while they are sleeping. Daniela explains that her son adores these movies. She knows that they aren't really suitable for a 4-year-old and actually threw them out. But Johnny went and got them out of the rubbish bin.

Next, he does a series of drawings inspired by Ghostbusters, from the famous 1980s films. He draws the car and the ghost vacuum cleaner. He says he has seen both of these movies. He draws two large ships with three decks and says they're full of ghosts.



His mother listens as we ask him if he knows if there are places where ghosts exist. Sounding confident, he says that there are a lot of ghosts in his house. Daniela is nice. She says Johnny's dad will be sentenced after the criminal investigation ends in January. She anticipates a great many visits to San Vittore Prison.

3 October 2009

Today, Johnny draws a boat and a ship which he says is 'empty'. He also draws a garden with flowers. The flowers have petals and claws.

16 October 2009

Johnny's mother, Daniela tells us she used to come to San Vittore Prison when she was 8 years old to visit her father. At first, she pays a great deal of attention to her child. They play and draw together. Later on, after someone they both know arrives, the mother speaks more in-depth about prison, the trials and the lawyers. Johnny is listening and grows visibly anxious. He throws his toys up in the air and onto the floor, trying to get his mother's attention.

23 October 2009

Johnny is crying as he comes out from the prison visit, yelling that he wants his dad. His mother is at the registration desk getting back their documents. The mother of his 4-year-old friend, Sofia, tries to comfort him. He and Sofia begin to play with a toy train and he calms down. When Johnny's mother arrives, we tell her that we had noticed

that Johnny was crying when he left the visits area, unlike previous visits. She answers that the child wants his father.

We ask her what Johnny says when it is time to leave, and she answers that she tells him that his father is working and has to wash the police car, and that he can't help him because you need to wear gloves and he doesn't have any. She then says that her husband told Johnny that he could work with him only when the boy's hands had grown as big as his own. Since then, every time the boy sees his dad, he measures the size of his hand in comparison to his father's.

31 October 2009

Halloween is the ideal holiday for Johnny's imaginary world: ghosts, skeletons, spooky pumpkins.

There are colourful paints for creating costumes for the children. Johnny wants a skeleton to scare his dad. He gets a kick out of frightening the other children. He takes his role seriously, but jokes that skeleton man is coming to put us in prison so we have to be strong. He draws a 'jack-o'-lantern' and colours it black. The pumpkin is a recurrent theme for Johnny.



6 November 2009

Johnny looks happy when he arrives, showing us a small electric train that he has brought from home. He plays calmly with Lego, then begins to draw while his mother waits in line. When his name is called for the visit, he runs towards the door, visibly happy. When he comes out, he goes over to the Spazio Giallo, crying because he misses his dad.

7 November 2009

... yesterday the house was on fire.

Johnny arrives with some small chocolate eggs for Sofia and says she is his new girlfriend. His mother gives him some iced tea. Johnny takes a few sips, then says that he feels very frosty. His mother tells us that yesterday the house caught on fire, after they forgot to blow out a scented candle. Johnny draws a pumpkin, although he says it is not a jack-o'-lantern but a witch's pumpkin. When we ask him if he likes eating pumpkin, pointing to his drawing, he answers that this pumpkin is only a sheet of paper. Then he goes outside with Sofia, saying, "Come on, let's go throw stones."

5 December 2009

We see Johnny two weeks later with his mother, who has brought flat bread and crackers. Johnny wants everybody to have some, except for one 3-year-old child, Maicol, with whom Johnny has been quarrelling. He has learned a new mode of greeting someone: he asks you what your name is, then repeats the name, making a mocking sound. “Do you want some water?”, asks his mother. He doesn’t answer, but out comes a bottle of cold water. Someone gives Maicol some french fries, who offers them to everybody except Johnny. Johnny gets angry and wants to hit him. When Daniela intervenes, he tells her to “Shut up!” She says, “Since you’re acting so badly you can stay here. I won’t take you in to see daddy.” He draws a very original Christmas tree, which covers the entire page – very large, green, with a star and colourful claws at the top and green snow covering the ground. He also draws a scary pumpkin and a big Santa Claus face.

12 December 2009

The first thing Johnny does is show us the handcuffs he has received as a gift, with a gun-shaped toy. Then he plays with a flying dinosaur which “attacks” people, with Johnny saying, “I’ll kill you” each time. He draws a Santa Claus with claws.



Before Christmas 2009, Johnny’s dad was granted house arrest. Nearly one year later, as Halloween approaches, his father returns to prison. Johnny comes to visit, with his mother and his 1-month-old baby brother, Anthony.

29 October 2010

Johnny has a very determined air when he arrives, more pronounced than a year ago, a bit authoritarian. He has a short haircut and looks like a neat little American navy recruit. When he enters the Spazio Giallo, he immediately writes ‘JOHNNY’ on the blackboard in big, legible letters. His first drawing after the most recent arrest is a disturbing pumpkin, which he cuts out and pastes onto another sheet of paper. Then he draws a bat, cuts out a red apple and a small brown cake. His last drawing is a brightly lit Christmas tree. Whenever he demands something and sounds like a little tyrant, we suggest that he say ‘please’, but his authoritarian tone persists. As he is playing, he starts counting quickly. His mother proudly tells us that he can count up to 60 and that she’s teaching him some words in ‘English’. Busy drawing, he turns around, not understanding ‘English’. What does it mean?

His mother finishes feeding his little brother and tells Johnny to get ready, that they were going to be called. Both mother and child are impatient. The prison officer calls out the names of the families and Johnny, prompted by his mother, goes twice to ask 'when's our turn?'

4 November 2010

Daniela, Johnny and Anthony arrive. We speak with Daniela during a moment of calm. She tells us that from 24 December 2009 until the previous week, her husband had been granted house arrest as part of a semi-open scheme. But last week they took him back to San Vittore, saying that there had been an error and that house arrest was not authorised for crimes such as he had committed. He had to serve the rest of his sentence (until February 2011) in prison. She says that the new arrest was a real shock for the entire family; it was so unexpected. Johnny still thinks that his father is in San Vittore because he is working there and hopes he'll be home for Christmas, like last year. Johnny's mother has told him that his father is in San Vittore to work, but his cousins have said that they can't play with him anymore because his dad is in prison. It's not clear what the child actually knows about his father being away. He is very bright and quick-witted. Currently, he seems to accept his mother's version of the story.

The mother tells us that the father had already served a prison sentence and, as a result, had missed out on a great deal of his son's early childhood. Johnny is calmly playing with some pots and pans, preparing some excellent meals for everyone present. He does another drawing: a new jack-o'-lantern in the same disturbing style. Johnny, even after the visit with his dad ends (in the child-friendly play area), wants to go back and play in the Spazio Giallo. His mother shows a drawing he did during the visit. It features a large black hand with claws. He takes the drawing home.

Johnny's dad is transferred to Pavia in mid-November 2010. It's very complicated for Daniela to travel all the way there, as it's a long way; her father will have to take her there.

A few observations about Johnny

Johnny loves to draw and he engages in this non-verbal form of communication very frequently. He seems self-confident and more mature than others of his age, in terms of how he engages with other children and in his requests to his mother and to others. The episode about his mother throwing away the Freddie Krueger movies is significant: it's as if his mother had said to Johnny: "I showed you these films but you are too young and you got scared." Johnny wants to see them again to prove to his mother that he is no longer afraid, but his inner fantasy world is riddled with hands with claws that he uses to express his fear, pain, rage and aggression. Johnny wants to prove to his mother that he is a big boy, so he writes his somewhat complicated first name frequently, as well as that of his mother. He demonstrates that he knows how to count, and his mother proudly mentioned his knowledge of some words in English. Some of his mother's statements are exaggerated, and often she is oblivious to the consequences of her actions and not only with respect to the child (the candle left burning overnight, for example).

Johnny uses vibrant colours – black and red, which we observe in the usual stock of characters making up his unsettling fantasy world: ghosts, witches, pumpkins. They are unsettling to us, but to Johnny they provide some reassurance in their recurrent form, as well as the opportunity to express strong emotions, putting them in to images on a

sheet of paper, and in this way being able to take some distance with respect to them. Johnny is visibly attentive, intelligent and clever as he speaks about his drawings; as if he understood that by speaking he is perhaps revealing just a bit too much about the world around him (a social worker may have had him undergo some tests using drawings, enabling him to learn about certain processes and expectations). The lie about his father's whereabouts (as an employee in the police car wash service) is significant. He wants his hands to grow big enough so he will be able to wear suitable work gloves and be with his dad. It's a tall tale, but Johnny pretends to think it is true so as not to disappoint his parents, even though he has heard what his cousins have said and knows they can't play with him.

When he returns a year later with his new baby brother, he continues drawing pumpkins and writing his name 'Johnny'. He is a year older and his 'adult' ways even more pronounced. His mother seems more agitated and impatient. His mother is very much present and he still feels the need to prove how grown up he is, so much more grown up than the average 5-year-old.