

Committee on the Rights of the Child
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“Children of Incarcerated Parents”



Submitted by the “Associazione Comunità Papa Giovanni XXIII”

TITLE: An alternative solution to prison for children of incarcerated mothers

The Associazione Comunità Papa Giovanni XXIII (APG23), founded by Father Oreste Benzi, is an international lay association of Pontifical Right in special consultative status with ECOSOC since 2006. The members of the Association share their lives directly with the socially excluded and most marginalised persons, committed to removing the causes of injustice, poverty and marginalization. The Association is headquartered in Italy but operates in 25 countries on five continents (Africa, America, Asia, Australia and Europe).

Worldwide, the Association has established 520 different centres, of which 298 are family homes, and runs several projects which aim to address the different needs of vulnerable people, including cooperatives. In addition, the Association has a non-violent presence in war zones with volunteers sharing life with people from both fronts, in order to guarantee the respect of human rights and to assist populations displaced by war.

In the family homes and first-aid shelters as well as in its cooperatives, the Association welcomes, among others, prisoners, adults and youth, offering them an alternative to imprisonment in agreement and cooperation with the criminal justice system. Since 2004, the Association has run also a specific home for prisoners sentenced either for crimes related to drug use or for other crimes, including homicide. As a consequence of its experience among and with incarcerated persons, the APG23 tries to promote innovative ways and approaches to re-educate and not just punish people who committed crimes, starting from the fundamental concept that “ *a person is NOT his/her mistake*” and as human beings, prisoners have inherent dignity and human rights that have to be protected, respected and fulfilled.

Hence, the Associazione Comunità Papa Giovanni XXIII warmly welcomes the choice of the Committee of the Right of the Child to address at the Day of General Discussion of its 58th Session, the theme “Children of Incarcerated Parents”, a theme that has been, so far, too much neglected.

Children of incarcerated parents, in fact, are heavily impacted by parental imprisonment and deserve more attention to be given to their rights, needs and welfare in criminal justice systems and practices.

Apart from those children who suffered domestic violence, neglect and/or child abuse or children whose parents were effectively absent in their role, upon whom the impact of a parent's imprisonment may be minimal or even beneficial, the majority of children suffer greatly throughout the entire process: from the moment of the arrest of the parent whether they are present or not, through pre-trial detention, the trial and sentencing to the imprisonment, and whether they are following their parent into prison (e.g. frequently infants and other small children) or remaining outside entrusted to somebody else. The impact can be profound and long-lasting. Trauma, fear, shame, guilt, low self-esteem and withdrawal, accompany the experience of parent's imprisonment, sometimes to the extent of provoking physical and mental damage. These children are very often discriminated against and stigmatised in the community.

Experts agree that early maternal separation causes long-term difficulties, including impairment of attachments to others, emotional maladjustment and personality disorders. It is also recognised that the development of young babies is retarded by restricted access to varied stimuli in closed prisons.

It is extremely important that Governments and policy makers are made aware of all the problems faced by children whose parents are incarcerated and can consider the best practices in order to be able to formulate laws that can protect children living in such a condition.

It is not known how many babies and young children are separated from their mothers and/or fathers in prisons but it is estimated that millions worldwide have at least one parent in prison and tens of thousands are living in prison with their parent. In the European Union, an estimated 800,000 are currently separated from an imprisoned parent¹ and some 980 infants are living in prison with the mother.

Surely, every child has the right to grow with his/her own natural parents providing that they are sufficiently adequate to fulfil their duties. When this will not be possible, a child should be welcomed by substitutive parental figures that can accompany him/her throughout the phases of childhood life.

Bearing in mind the principle of “*the best interest of the child*” affirmed in article 3 of the Convention of the Rights of the Child, children whose mothers are incarcerated, should have guaranteed the maintenance of the vital relationship with their own natural mother. Normally, to separate these children from their mothers will be a serious violation of the fundamental right of the child.

Moreover, it is necessary to formulate laws that foresee alternative ways and places of rehabilitation from criminal life, such as family-based communities, family homes, etc. whereby a child can stay with his/her mother out of prison and both the mother and the child can benefit from an educational and rehabilitating environment.

In this regard, legislation worldwide is lacking and/or varies considerably, ranging from countries that oppose any child entering prison, through those that permit babies to stay with their mother during breastfeeding, to those that allow children to live with their imprisoned mother for several years.

The Committee on the Rights of the Child has recommended to States to develop and implement clear guidelines on the placement of children with their parent in prison².

The Parliamentary Assembly of the Council of Europe in its Recommendation 1469 (2000) on the related subject clearly invites Member States among others “*to develop and use community-based penalties for mothers of young children and to avoid the use of prison custody*”.

APG23 has gained experience with prisoners in several countries (Bolivia, Brazil, Italy, Kenya, Romania, Russia and Tanzania) but would like to focus, in this contribution to the Day of General Discussion, on the situation of children with incarcerated parents in Italy and the proposal that the Association has made to the Italian Government.

Currently, in Italy, 55 women are in prisons with their own children, 56 of the children are below 3 years of age³. Of these women, 14 are Italian and 41 are from other nationalities. 31 of the women have been convicted of crime. On 30 March 2011, the Italian Government approved the Decree of Law n. 2568 that will be implemented starting from January 2014. This decree extends the limit of

¹ EUROCHIPS, based on Council of Europe Annual Penal Statistics (France 2000).

² CRC/C/MEX/CO/3, Concluding Observations: Mexico, 8 June 2006 and other Concluding Observations.

³ Department of Prison Administration, 30 June 2010.

age for the child to be kept with the mother from 3 years to 6 years and establishes that pregnant women or mothers with children below 6 years of age who are in pre-trial proceedings cannot stay in prison other than in exceptional circumstances, but should be detained at home or in protected institutions (ICAM⁴). Moreover, and mothers already convicted can serve a third of the sentence in detention at home or in other attenuated custodial institutions provided that they are not guilty of particular crimes.

Italian law 663/86 already foresaw the possibility of home detention for parents with children, who have to serve the sentences longer than 4 years; Law 165/88 brought the age-limit for the children up to 10 years, and Law 40/2001 has introduced special detention at home or in non-custodial structures for mothers with children not exceeding 10 years of age who have to serve longer sentences (even life imprisonment), if there is no risk that they will commit other offences and they have already served a third of the sentence.

In view of this body of law, the Associazione Comunità Papa Giovanni XXIII, has proposed to the Government of Italy to consider the possibility of entrusting imprisoned mothers with their children to its family homes. In Italy, there are 254 APG23 family homes distributed across almost all the national territory.

An APG23 family-home is a residential and educational community where people in need are welcomed for a limited or lasting period of time. It is organised just like a family and characterised by the continual and stable presence of parental figures – mother or father or both – who choose freely to share life with the persons in need of love and care.

It is a real substitute family in which the maternal and paternal figures accept to love the children and all the people entrusted to them. They may be a married couple who, apart from their own natural children, are fostering orphans, abandoned children, adolescents in difficulty, children/adults with disabilities and marginalised people; or they may also be single, widow/ers or consecrated persons with hearts open to fulfilling the role of motherhood and fatherhood. As a rule, these two fundamental figures are required to be definitive, unique, precise and to offer themselves unconditionally. Apart from these parental figures, there may be other volunteers willing to live as older brothers and sisters or “aunts and uncles”.

The relationship between the children accepted in the home and the parental figures is individualised and personalized. Hence, the criteria to decide how many children should be welcomed in the family-home is the so called “responsible fatherhood”. People welcomed into family-homes are not divided into categories, but, just as in any other family, there are children, teenagers, and adults of various ages living together. The people are not divided according to the problems they may have: children with mental and physical disabilities live alongside those without, people who are poor or socially excluded stay in the family-home alongside those in different kinds of need.

Of course, due to the delicacy and complexity of the problem of children with incarcerated parents, this will require close cooperation and concerted efforts among the appropriate institutions (police, judiciary, social welfare etc) and the Association in order to address properly all the aspects involved in the experiment (security, respect of the law, protection of the children, duties of the mothers to serve the sentence, etc. etc.).

The proposal that APG23 forwarded to the Italian Government in February 2011, is still under

4 ICAM (Istituto a Custodia Attenuata per Madri detenute e i loro figli da 0 a 3 anni).

scrutiny. This project aims to offering an adequate life environment to the children by guaranteeing as provided by law, the continuity of care and love by the incarcerated parent (mother or father in case the mother is deceased), while at the same time supporting the parent in her/his parental role by establishing significant relationships and the opportunity to discover values that can help the rehabilitation process and future social reintegration.

The conceptual framework behind the proposal is that:

1. Every child, in particular an infant or a very young one, has the right to stay with the incarcerated mother provided that there is a guarantee that his/her psycho-physical well-being will be obtained and respected.
2. Every child, in particular an infant or a very young one, has the right to stay with the incarcerated mother provided that adequate conditions of care and protection of his/her security are guaranteed.
3. It would be advisable for every child, especially if an infant or a very young one, to grow and develop within his/her family environment, with particular attention to the child's loving relationship with the mother who will guarantee a serene and balanced psycho-physical development.

Consequently, the programmatic criteria of the proposal are:

1. To ensure that mothers (and fathers) are responsible for all the aspects of the care of their child.
2. To promote socialisation to avoid that the relationship between mother and child will become too unique and exclusive (in fact, isolation represents a risk factor for the stability of a family and the correct development of the character of the child).
3. To promote the development of significant affectional relationships between child and parents by facilitating a continuous dialogue between the parents regarding the attainment of the well-being of the child.

While this particular proposal to date has been presented only to the Italian government, the APG23 is convinced that such a proposal, as well as similar pioneering experiences of other civil society organisations, are worthy to be explored and considered by other Governments as well, because, if adjusted to the different cultural contexts of the various countries, it may be a valid alternative to the imprisonment of mothers with children.

Alternative solutions to prison for children of incarcerated mothers, such as the one described above require that Governments formulate laws that allow these kind of projects to be realised.

Finally, the Associazione Comunità Papa Giovanni XXIII, in relation to the specific issue of babies and young children living with the mothers in prison, would like to recommend to Member States the following:

- To avoid as much as possible the custody use by developing and using community-based penalties for pregnant women and mothers with young children instead.
- To develop child-friendly small-scale units with social services support for the small number of mothers who do require custody.
- To envisage initial and on-going training for criminal justice professionals and prison staff on

the issue of mothers and young children, the Convention of the Rights of the Child and child care.

- To extend the time and frequency of visiting by fathers in cases where children remain incarcerated with mothers in prison.