CHILDREN OF PRISONERS and HUMAN RIGHTS:
THE FORGOTTEN VICTIMS

By Maya van der Meij
(LLM International and European Public Law-
International Law and Human Rights)

Supervisor: A.K. Meijknecht

2012-2013
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**Introduction**

“Mankind owes to the child the best that it has to give”\(^1\). This is the Geneva Declaration is introduced and making of this sentence a founding principle of the protection of children’s rights. In fact, Geneva Declaration of the Rights of the Child is one of the first steps in the protection for children and according to it the best should be done in order to protect them.

Thus, a lot of international instruments had been written in favor of children in the beginning of the 19\(^{th}\) century. In 1841, laws started to protect children from working. Then, on a more global scale, the League of Nations created in 1919 the Committee for Child protection. This latter lead to the 1923 Declaration of the Rights of the Child, adopted in 1924. This is the first international text giving specific rights to children. In 1946, the United Nations adopted it and the Declaration was used as a base to write the Convention on the Rights of the Child.\(^2\) This text is the most essential regarding the issue of the protection of children and especially their rights. It was created in 1989 and on the current date, 193 countries are party to it. Significantly, United States is the only country with Somalia and South Sudan which has not ratified it yet. In addition, at European level there is European Convention on the Exercise of Children's Rights made by the Council of Europe. It aims to “promote children's rights and protect their best interests”\(^3\).

These two former conventions are general in the sense that they do not focus on a particular field. Nevertheless, there are more and more conventions at both international and European level focusing on a specific topic. For instance -among others-, the ILO Worst Forms of Child Labor Convention, United Nations Convention on the Rights of the Child, the European Convention on the Adoption of Children, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse or Convention on Contact concerning Children. In short, there is a large legal framework regarding children all over the world.

However, there is at least one group which still does not have special rights. Children of prisoners are not considered as a vulnerable or as a victim group. What is very sticking is that

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1 Declaration of the Rights of the Child (adopted 10 December 1959) UNGA Res 1386 (XIV), Preamble
we are not talking about a situation in very poor countries or countries in state of war. These children are also present in America or in Europe and it is not a recent situation. Historians say that prisons have existed as an institution for more than 400 years in Europe. Besides, they do not represent a limited part of the population. In 2007, the Council of Europe published statistics and according to which there were 615,000 prisoners in the European Union. The current estimation is 800,000 children in Europe are separated from an imprisoned parent. This number is estimation, as there is no official survey, but it shows that these young humans are not a marginal population.

There is a lack of protection, and this can be explained because it is difficult to gather them, their situations are so disparate. In fact, it is difficult to give a definition of this group. According to the UN Convention a child is “any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.” However, here the word “child” is understood as “a son or daughter of any age”. Then, “prisoner” refers to a person deprived from his liberty as a consequence of an illegal behavior. Hence the expression ‘children of prisoners’ refers to human beings who have one or two parents deprived of liberties. However this expression is very wide thus, in this work, prisoners due to mental diseases and incarcerations caused by illegal immigration will not be approached. This thesis will focus on parents but other imprisonments could have impacts on children such as imprisonment of brothers, sisters, grandparents or cousins.

Children, especially babies can live with their mothers in prison. In fact, in several European countries mothers are allowed to keep their babies, even if the practicalities vary depending on the country. Often, this is possible until the age of three such as in Spain or Belgium or four as it is in the Netherlands or in Greece. This situation is also a key issue regarding rights of the child. It is difficult to agree that prisons are a good environment for children but at the same time, can we consider the fact to be separated from the mother as a better option.

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4 L. Ayre, L. Gampell and P. Scharff Smith, *Children of imprisoned parents* (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
5 Council of Europe Annual Penal Statistics <http://www3.unil.ch/wpmu/space/#.UWWOXrXLp8E>
6 L. Ayre, L. Gampell and P. Scharff Smith, *Children of imprisoned parents* (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
7 Oxford dictionary, ‘Child’
8 A. Bouregba and others, Chapter five: ‘Children living with imprisoned mothers’ from *Children of imprisoned parents: European perspectives on good practice* (Eurochips, 2006)
The case of these children has been studied and some improvements were made. The United Nations published a report in 2005 called “Babies and Small Children Residing in Prisons”. The Committee on the Rights of the Child recommended to States in 2006 to develop a policy regarding these children living in prisons. Hence, there are various issues regarding the topic of children of prisoners.

However, most children affected are older than three or four and as a result this work will focus on children of prisoners outside jail and separated from the offender.

**Accordingly the main question is whether there should be a European Instrument to protect children of prisoners?**

To answer this question, several elements need to be studied before. First of all, to determine if there is a real need for a new legal instrument, it is necessary to examine the current legal framework which applies (Chapter 1). Moreover, the situation will be presented in order to determine what prisoners’ children lives are and also what are the impacts and consequences of parental incarceration (Chapter 2). In addition, the main actors dealing with this issue are associations and Non-Governmental Organizations. Hence their views, recommendations and actions must be highlighted (Chapter 3). Therefore an overview of the current legal gap could be drawn, comparing the recommendations and the responses given (Chapter 4). Accordingly, some propositions, recommendations and conclusions could be formulated (Chapter 5).

In order to obtain an accurate overview of prisoner’s children lives and the current situation, this thesis is based on the research made by the NGO EUROCHIPS, which is a network of European associations working to protect children of prisoners.

It was created in 1993 by the French association *Relais Enfants-Parents* and the *Bernard van Leer Foundation*. It is a European network of associations struggling for children of prisoners. In others words it is a pan-European organization gathering national associations active within “prison-related, child’s rights and child-welfare fields”. It sustains all initiatives in favor of children of prisoners and especially to maintain family ties despite imprisonment. In fact they try to “boost the number of child-friendly visits areas” and “to expand programs that support the child-parent relationship”\(^9\). In addition, they have two other main goals, which are the training of professional and to influence policy. It is based in Paris. EUROCHIPS has also

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\(^9\) “About us” <http://www.eurochips.org/> accessed on 1\(^{st}\) April 2013

\(^{10}\) ‘About us’, EUROCHIPS presentation booklet
been part of another project which will be used and approached later. It is a survey conducted
over 4 countries (Northern Ireland, Denmark, Italy and Poland) by several entities, the Danish
Institute for Human Rights, Ulster University and EUROCHIPS.

In other words, this work is written in cooperation with the NGO in the sense that people from
it shared their data as well as their opinion during a meeting in Paris. However, the reflection
of this work is only constructed on the base of the NGO work but this latter is used with
hindsight in order to provide a clear and objective view.
Chapter 1: Current legal instruments

The current legal framework concerning the topic of children of prisoners is claimed to be weak by NGOs, such as EUROCHIPS\textsuperscript{11}. However, it is worthy of a particular analysis. This analysis asks for some precisions (Section 1), to present the International framework (Section 2) and the European one as well (Section 3).

1.1. Introduction

“Not Seen. Not Heard. Not Guilty.”\textsuperscript{12} This is how the Scotland’s Commissioner for Children & Young People describes these children.

“Not seen. Not heard”, refers to the other nicknames of such children - the “forgotten children”\textsuperscript{13}, “hidden victims of imprisonment”\textsuperscript{14} “orphans of justice”.\textsuperscript{15} In fact, as said before, until recently the issue of prisoners’ children has been completely forgotten. They have not been paid attention to in national, regional or international level. As an example, the impact of imprisonment on the prisoner’s family is still one of the least studied fields within criminology.\textsuperscript{16}

“Not Guilty” is a reminder of the fact that children did not commit the offence their parent was convicted for but they will also be punished. This is against the basic principles of criminal law. Individuals should be punished for their own offences. However, children are the direct victims of the consequences of such situations. Not only are the offenders affected by their sentence but also other persons, including their children and their families, are done so. Furthermore, sometimes the impact on the children’s life is even worse than the illegal act itself. Children lose a parent. Moreover, “the parental role is much more than a parent’s obligation to rear, nourish and protect the child, which are keystones to parental authority”.\textsuperscript{17}

\textsuperscript{11} R. Wolleswinkel, ‘Chapter two: Legal Background’ in Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006).
\textsuperscript{13} L. Gampelland, A. Martynowicz and P. Scharff, Chapter eight: ‘Conclusions’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
\textsuperscript{14} A. Cunningham, Waiting for Mommy. (Centre for Children and Families in the Justice System, 2003)
\textsuperscript{15} J. Tomkin, Orphans of Justice - In search of the best interests of the child when a parent is imprisoned: A Legal Analysis (Quaker United Nations Office, 2009)
\textsuperscript{16} A. Liebling and S. Maruna, The Effects of Imprisonment( Cullompton, Willan , 2005) quoted by E. Ayre, L. Gampell and P. Scharff Smith, Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre , 2011)
\textsuperscript{17} A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
Parents themselves are keystone of children well-being but these imprisoned parents are seen as bad persons who do not deserve to be parents.

Until recently this problem was addressed only at a national level. In other words, it was only through the national legislation that children could be protected. On national level the relationship between the parents and children is protected, especially through family law. However this protection stops when prisons and offenders are being brought into the conversation. This is principally because at national level, the punishment is the most common measure against offenders. “Judicial systems are “centered on the principals of ‘justice’ and ‘individual responsibility’”.”18 It has also been said that there has been an increasing politicization19 of crime. In other words, crime has been used for political purposes. This process increased with the attack of the 11th September 2011. As a result the offenders are even more unpopular among the population.20 This point of view reveals the whole tricky problem. There is an opposition between the role of prisons, the punishment, security measures on one hand and the necessity of humanization, opening toward the outside and considering prisoners as persons on the other. As a matter of fact, the punishment has been highlighted and the protection has been very limited. However one can notice that there is an evolution in the field, for instance in Switzerland. In fact, in 2000 it was allowed to visit a prisoner in every three months21 while today, in most prisons it is possible to do it every week. Another example can be drawn from Belgium, where before 2005 prisoners were allowed to write only to a limited list of persons. Today this restriction does not exist anymore.

1.2. International legal framework

Little by little, children of prisoners became a more global issue. For instance, a research was conducted in the 1990s in the US, focusing on the topic of mothers in prisons.22 In addition, a

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20 G. Boswell and P. Wedge, ‘Support for prisoner-child relationship: a reflection on two decades on research evidence’ [2011] UN Discussion Day on Children of Incarcerated Parents
21 M. Herzog-Evans, *L’intimité du détenu et de ses proches en droit comparé* (L'Harmattan, 2000)
Day of General Discussion was organized in 2011 by the United Nations Committee on the Rights of the Child.

Even though this thesis is focused on Europe and the issue on a European level, the international legal framework should also be taken into consideration. Indeed, if the international protection is enough to protect children of prisoners, there is no need to create an instrument in Europe.

The main international instrument regarding the protection of children is the UN convention of the Rights of the Child (CRC). Thus this section will focus on it. In addition, other instruments which may concern the protection of children of prisoners will be briefly analyzed.

The UN convention of the Rights of the Child was created more than 20 years ago in 1989. It is the most widely ratified Human Rights Instrument today. Apart from United States, Somalia and South Sudan, all other 195 signatory states have also ratified it. Such a wide scale of regulation makes it an incredibly powerful instrument.

Regarding children of prisoners, the Convention protects some rights which directly concern them. Article 2 formulates the right to be free from discrimination, which refers to stigmatization. Article 3 grants protection to the best interest of the child and is the most used article regarding the children of inmates. In other words, every act which can have an influence on a child’s life should be done in their best interest. In addition, article 9 regards the right to have direct and frequent contact with parents from whom the child is separated. Then, article 12 is the right of the child to express his or her views and to be heard in matters affecting their situation. Finally, article 16 is the child’s right to protection of their family life and their privacy and article 19 concerns the right of the child to protection from any physical or psychological harm or violence. In other words, the latter article could be applied during arrests or visiting the parents in prisons (especially during the security search).

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24 Ibid, article 3
25 Ibid, article 9
26 Ibid, article 12
As a consequence, the Convention of the Rights of the Child is quite complete regarding children of prisoners. But two elements should be noticed here. First of all, these rights are very general and are not only for children of prisoners. As a result of the vaguely phrased provisions, it does not oblige parties to take any direct measures. Furthermore, regardless of the numerous signatory parties to the Convention, it appears that measures and laws at a national level which could help and protect children of prisoners according to these articles are almost nonexistent. Thus, the Convention does not provide sufficient protection to the children of prisoners.

The CRC is not the only international text which could be applied to the children of prisoners. In fact, several human rights instrument also protect family life\(^\text{27}\), the Universal Declaration of Human Rights, the International Covenant on Civil and Political rights and the International Covenant on Economic, Social and Cultural Rights.

Finally, regarding international legal text, there are different international instruments specialized on the rights of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners was adopted in 1955. It is not a legal binding text; it gives nevertheless guidelines to the States. Regarding prisoners’ children, Article 37 stipulates that “prisoners shall be allowed under necessary supervision to communicate with their family (…) at regular intervals, both by correspondence and by receiving visits”\(^\text{28}\). In addition, the UN Body for Principles for the Protection of all Persons under Any Form of detention or Imprisonment was created in 1988. It should ensure the respect of the principles expressed in ‘Scope of the Body of Principles’ and more broadly all the rights from the International Covenant on Civil and Political Rights. Among its principles one also protects the communication with the outside world and especially the family\(^\text{29}\).

To conclude, various articles and provision from international legal instruments could apply to the protection of children of prisoners but in practice states do not use them as a basis to set


\(^{28}\)United Nations Standard Minimum Rules for the Treatment of Prisoners (adopted 30 August 1955) ESC Res 663 C (XXIV) and 2076 (LXII), Article 37

\(^{29}\)Body of Principles (adopted 9 December 1988) UNGA Res 43/173, Principle 16 (section 1)
up measures in favor of such protection. Thus, the current international instruments are not efficient and effective enough regarding this vulnerable group.

1.3. European legal framework

One would expect that at a European level some measures would be taken and projects launched concerning the discussed matter. In fact, the Council of Europe, through the European Convention regarding Human Rights, is said to be the most developed human rights protection system. As written by J. Murdoch, “Amongst its many achievements the Council of Europe is best known for its work in Human Rights.”\(^{30}\) That is why this research will focus on Europe, as a general expression. Therefore this section will present both instruments from the European Union and the Council of Europe, with a particular concern for the European Court on Human Rights.

1.3.1. European Union

Recently, the European Union began paying attention to the children of prisoners. Specifically measures regarding children have been taken. The COPING (Children of prisoners, Interventions and Mitigations to Strengthen Mental Health) Project has been launched by the European Union to collect data on children of prisoners. It is presented on its website as “a child-centered research strategy covering four European countries, which will identify the characteristics of children with imprisoned parents, their resilience and their vulnerability to mental health problems.” These four countries are Sweden, Germany, Romania and United Kingdom, and during three years over seven hundred children had been interviewed.\(^{31}\) Last November, a Conference was held in Brussels and professionals reported their results. Accordingly, a report was published in 2013: “Coping with a parent in prison: an agenda for policy reform”.

Besides, the institution has also other measures and instruments regarding this issue. First of all, in 2008 the European Parliament adopted a resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life. This text gives some very important recommendations. First of all, it “recommends that alternative penalties to imprisonment (…) should be favored” with the aim to reduce “serious disruptions


\(^{31}\) Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
to family life".  

This recommendation is addressed to the judicial authorities. In other words, the authorities should take into consideration children and the family when passing criminal sentences to women. Importantly, this recommendation is not limited only to mothers but also extends to “male prisoners with custody of children or who have other family responsibilities”. Furthermore, two other recommendations have to be noticed. Section 21 insists on the fact that children must be taken into consideration when passing a sentence and especially, to maintain and protect their rights. Section 24 asks Members states to facilitate the contact between imprisoned parents and their children. The request also adds that this contact should be set up in good conditions. Thus, this instrument is already an important step in favor of the children’s protection. But this resolution does not seem to have any impacts on national legislation or at least not a homogenous one. For example in France no text or bill has been created, while in In Denmark and Poland, the law allows for consideration of family circumstances during sentencing.

In the Human Rights Instrument of the European Union, some measures could also be applied to the children of prisoners. In fact, article 24 of the Charter of Fundamental Rights grants the rights of the child. The first section reminds that children should be free to give their point of view and opinion, especially “on matters which concern them in accordance with their age and maturity”. In addition, the second paragraph is very similar to article 3 of UN convention of the Rights of the Child; it highlights the fact that the best interests of children are primordial and should always be paid attention to. Finally, the last section of article 24 regards the rights to keep contact and maintain relationship with parents. Besides, there is article 7 which concerns the respect of family life.

As a conclusion concerning European Union policy, one can say that it is more than the international one but still do not seem to be adequate.

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32 Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (adopted 13 March 2006) EP Res 2007/2116(INI), section 19
33 Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (adopted 13 March 2006) EP Res 2007/2116(INI), section 21
34 E. Ayre, L. Gampell and P. Scharff Smith, Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
35 Charter of fundamental rights of the European Union (ratified 7 December 2000) 2010/C 83/02, article 24
36 Ibid, Article 7
1.3.2. Council of Europe

There are numerous and diverse instruments in the Council of Europe regarding the children of prisoners. These instruments split in two categories: those regarding children’s rights and those concerning prisoners.

First of all, the European Convention on Human Rights (ECHR) gives some protection without being in any categories. This protection is provided in article 8 which formulates the “Right to respect for private and family life” as a consequence it protects family ties. It has been used by the European Court on Human Rights to give some protection to prisoners and especially regarding the maintenance of contact and relationship, but this will be approached later on.

Secondly, several instruments about children’s rights are present in the Council of Europe’s legal framework. Some of them provide measures and articles which could apply to children of prisoners.

The European Convention on the Exercise of Children's Rights is a specialized convention regarding children. It was opened for signature in 1993 but came to force only in year 2000. Today, 17 out of 47 states of the Council of Europe have ratified it. This number is small enough to understand that the scope of the application of this instrument is very limited. Especially since countries such as United Kingdom, Spain or the Netherlands have not ratified it. However, this text possesses a special measure for children regarding their involvement in proceedings. Article 3 formulates that children need to be given important information, consulted and informed of the impacts of their opinion.

Then, the Council of Europe has various conventions, which are not well known and sometimes not even ratified by half of the member states. It is the case –among others- for the European Convention on Establishment, Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and Convention on Contact concerning Children. This latter convention is only ratified by 8 States and among them only Romania and Czech Republic are part of the European Union. So it has a very small scope of application. But some measures are directly related to the issue of parental...
imprisonment. First of all, the preamble explains that one of the aims of the Convention is “to establish co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between children and their parents”.\textsuperscript{39} Secondly, article 4 states that both parents and children own a right to keep contact with each other. Finally, there is a statement related to the rights to know, to be consulted and to express opinion. It is in article 6.

Additionally, in 2010, the Committee of Ministers adopted the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice. These guidelines must be applied “to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law”\textsuperscript{40}. And the purpose is “to ensure that, in any such proceedings, all rights of children, (…) are fully respected”\textsuperscript{41}. Thus, the guidelines are complete regarding the protection of children during proceedings but also before and after, for instance ensuring a psychological help\textsuperscript{42}.

Thirdly, the Council of Europe has developed a network of various instruments for the protection of prisoners’ rights.

The main instrument in the Council of Europe regarding the issue of prisoners, are the European Prison Rules. The current text had been adopted in 2006 and gives all the basic standards that should be applied in European jails. It also clearly recommends to member states to be “guided in their legislation, policies and practice by the rules” and “ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison staff and individual prisoners”.\textsuperscript{43} It is thus, a set of recommendations without binding effect but which is referred by the Court on Human Rights\textsuperscript{44}. Among these rules, some concern directly the issue. In fact, there are references to family and the rights for prisoners to have contact with it. First of all, rule 24.1 stipulates that prisoners should be enabled to contact “as often as possible” with the outside. Then, rule 24.4 is about visits and especially the fact that

\begin{footnotesize}\begin{align*}
\text{39} & \text{ Convention on Contact concerning Children (adopted 15 May 2003, entered in force 1 September 2005) CETS 192, article 1} \\
\text{40} & \text{Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2abc, Article I(2)} \\
\text{41} & \text{Ibid, Article I(3)} \\
\text{42} & \text{Ibid, Article IV(A)} \\
\text{43} & \text{European Prison Rules (adopted 11 January 2006) CM Rec (206)2} \\
\text{44} & \text{For instance, case of \textit{Ramirez Sanchez v. France} App no 59450/00 (ECtHR, 4th July 2006)}
\end{align*}\end{footnotesize}
visits should be allowed and organized to enable prisoners to maintain a relationship with his family. And finally, according to rule 60.4, “Punishment shall not include a total prohibition of family contact”.45

Furthermore, another element of the Council of Europe which gives recommendations regarding children of prisoners is the European Committee for the Prevention of Torture. This committee has been created to look after States and especially to check if the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is respected throughout Europe. The Committee visits prisons, more generally “places of detention” and publish reports about the visits. It also issues an annual report in the end of the year regarding its activities. In the first ones (the second and third one) it gave some propositions regarding the right for prisoners to get visits and contact with the family. For instance in the report made in 1992, it stated: “It is also very important for prisoners to maintain reasonably good contact with the outside world. (...) The CPT wishes to emphasize in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable)”.46 Thus, also this entity gave an importance to the maintenance of contact with families.

Finally, a crucial text regarding Prisons standards and Rights of Prisoners has been erected in June 2012. It is the Compendium of conventions, recommendations and resolutions relating to penitentiary questions. It joins, “standard-setting texts of the Committee of Ministers relating to penitentiary issues” an “is intended for the use of courts, parliaments and national authorities including the prison administration”.47 It gathers three conventions, twenty two recommendations and three resolutions including the Prisons Rules. This text comprises several pieces of advice and recommendations regarding the relationship with the family, the right to maintain contact. Significantly, there is a part called “Guidelines for prison staff conduct”, which, for instance, provides that “Prison staff shall endeavor to maintain positive professional relationships with prisoners and members of their families”.48

45 Ibid, rule 60.4
46 2nd General Report on the CPT's activities (CPT/Inf (92), 13 April 1992)
47 P. Boillat, ‘Foreword’ in Compendium of conventions, recommendations and resolutions relating to penitentiary questions (Council of Europe Publishing, 2012)
48 Compendium of conventions, recommendations and resolutions relating to penitentiary questions (Council of Europe Publishing, 2012)
In short, the Council of Europe has a complete and developed network of instruments regarding either children or prisoners. However, this analysis requires the examination of the cases held by the European Court on Human Rights.

1.3.3. European Court on Human Rights

The most famous entity of the Council of Europe, the Court, has also given its point of view regarding this issue. There is no real ruling concerning children of prisoners but more rulings about prisoners and their right to keep contact with the “outside”.

First of all according to the Court, article 8 gives a positive obligation to prisons authorities to help inmates to maintain contact with their family.49

In the case *Calogero Diana v. Italy*50, the Court ruled about censorship concerning correspondence of prisoners. The applicant has been convicted to life imprisonment because he was found to be part of the terrorist organization the ‘Red Brigades’. He claimed the infringement of his rights to respect for correspondence. This right is stipulated by article 8 (1), “Everyone has the right to respect for (...) his correspondence”.51 The Court rules this interference with correspondence is a violation of article 8 because the Italian law “gives too much latitude” to authorities regarding the censorship.52

More precisely about the relation with family, in *Lavents v. Latvia*53, the Court convicted the State for interference with his rights to respect for family life and correspondence. The applicant was a business man and was convicted for sabotage. He claimed the infringement of his rights under article 8. In fact, the defendant had been banned to see his wife and daughter for 19 months and also to correspond. The Court reminded in this case the two exceptions of article 8. The provisions or article 8 don’t have to be respected if the measure is “in accordance with the law” and “necessary in a democratic society”.54 Regarding the correspondence, the Court concluded here again that the law gives “too much latitude” to

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50 *Calogero Diana v. Italy* App no 15211/89 (ECtHR, 15 November 1996)  
51 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered in force 3 September 1953) CETS 005 (ECHR), article 8(1)  
52 *Calogero Diana v. Italy* App no 15211/89 (ECtHR, 15 November 1996)  
53 *Lavents v. Latvia* App no 58442/00 (ECHR, 28 November 2002)  
54 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered in force 3 September 1953) CETS 005 (ECHR), article 8(2)
About the family visits, the Court held it was an intrusion in regard with the applicant’s right to respect with family life. However it did not examine the two possible justifications of this intrusion but considered it was an infringement. The conclusion is that the restrictions to family visits are justified only if they are found on an urgent social need and are proportionate.

Another case is relevant regarding the issue of parental incarceration. In the case *Sabou and Pircalab v. Romania*, the Court examined the Romanian law. According to this law, the imprisonment of a parent implies an automatic ban of exercising parental duties. It is applied automatically without any control, to every prisoner. The applicant claimed that this ban was an infringement of his rights according to article 8. The Court highlighted that the conviction had no link with the family or parental authority issue. It ruled that this measure should be taken regarding the interests of the child rather than the punishment of the parent. In addition the only way this law could be in accordance with article 8 would be if it would concern an urgent need regarding the children’s interests or if it would pursue a legitimate aim such as health, moral or education. As a consequence the law is in this case a violation of article 8.

The position of the Court is positive concerning the maintenance of relationship for a prisoner. However, all these cases are based on the prisoner’s rights according to article 8 and not on children protection.

Nevertheless, the Court held several cases concerning directly children but not those of imprisoned parents. Even if the convention has only a few articles on the rights of children, the Court interprets it as a living instrument and extended the Convention in order to protect children. The main principle established is the best interest of the child. For instance, in the case *X, Y and Z v. the United Kingdom* the Court held that “the community as a whole has an interest in maintaining a coherent system of family law which places the best interests of the child at the forefront”. The best interests are highlighted in various other cases such as

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55 *Lavents v. Latvia* App no 58442/00 (EctHR, 28 November 2002) para 136
56 *Ibid* para 140
57 *Lavents v. Latvia* App no 58442/00 (EctHR, 28 November 2002) para 141
58 *Sabou and Pircalab v. Romania* App no 46572/99 (EctHR, 28 September 2004)
59 *Sabou and Pircalab v. Romania* App no 46572/99 (EctHR, 28 September 2004) para 48
60 *Ibid*, para 49
61 *X, Y and Z v. the United Kingdom* App no 21830/93 (EctHR, 22 April 1997)
62 *Ibid*, para 41
Bronda v. Italie\textsuperscript{63} regarding a fostering or Sommerfeld v. Germany\textsuperscript{64} about the right for a father to visit his child born out of wedlock. Thus, the Court has also a position in favor of children’s rights protection but has never applied it in reference to parental imprisonment.

1.4. Conclusion

As a general conclusion regarding the legal framework, one can say that there are a lot of provisions regarding the relationship between prisoners and families. Consequently the legal framework seems to be complete. However it appears today that the children of prisoners are still not regarding as a vulnerable group and are not the targets of these rights. Also all these recommendations and propositions are separated in many different instruments, thus that could be an explanation why States are still late regarding this issue.

National laws, indeed, provide rarely measures. Yet, there are some. For instance the Norwegian Law states that “particular importance shall be attached to a child’s right of access to his or her parents during the execution of a sanction”.\textsuperscript{65} The French Criminal Procedure Code also cares about children. Article D.402 states that, in order to facilitate the inmates’ reintegration in the society after their release, the maintenance and the improvement of the relationship with the family should be ensured, as far as this is the best interest of both sides.\textsuperscript{66} Consequently sometimes the law requires some measures to be taken in favor of family ties. But then the question is if these national laws’ requirements are in agreement with the current situation.

The situation of children of prisoners is, indeed, unique and a deep research needs to be done in order to determine the impact and consequences of the imprisonment.

\begin{flushright}
63 \textit{Bronda v. Italie} App no 22430/93 (EctHR, 9 June 1998)  
64 \textit{Sommerfeld v. Germany} App no 22430/93 (EctHR, 8 July 2003)  
66 Code de Procedure Pénale, Article D.402
\end{flushright}
Chapter 2: Parental imprisonment: consequences and psychological impact

“We worry about what a child will be tomorrow, yet we forget that the child is already someone today.”\(^\text{67}\) This quotation attributed to a certain Stacia Tauscher, became very famous in internet. It highlights or forgets, depends on the interpretation, the fact that the present and the future of children are linked. Their present makes their future in the sense that present has impacts and consequences which will influence the future. As a matter of fact, this sentence matches with the issue of parental incarceration. In fact, if children suffer from the situation now there will be repercussions on their behavior in the future. As summed up by E-M Knudsen, “children of prisoners as a group face a disproportionate rate of family risk factors such as poverty, parental unemployment and substance abuse”\(^\text{68}\)

Colette Frère wrote that children of prisoners are also punished because as their parents their rights are reduced.\(^\text{69}\) In fact most of children suffer from the situation which is traumatic. However this statement is a generalization and the impacts will vary from child to child (section 1). Once this putting in perspective established, this chapter will expound what events and consequences follow the parental imprisonment (section 2) and what are the psychological impacts on the child (section 3).

2.1. Generalization and generalities

It is very difficult to generalize the consequences of parental imprisonment on children. The only point on which the whole literature agrees is that problems experienced by prisoners’ children are multiple and complex.\(^\text{70}\) On the one hand some scholars maintain that imprisonment of parents could be beneficial for children and that the impacts are minimal.\(^\text{71}\) This is obviously the case of violent and abusing parents. The conviction and the incarceration is a positive event for children because they would be released from a bad living environment.

\(^{67}\) <http://www.families.com/blog/more-great-quotes-about-kids> accessed on 13th May 2013

\(^{68}\) E-M Knudsen, ‘Children of Incarcerated parents’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)

\(^{69}\) C. Frère, ‘Séparés par des Barreaux. La situation des enfants dont les parents sont détenus’ (2008) 278 Journal du droit des jeunes

\(^{70}\) U. Convery and L. Moore, ‘Chapter two: Children of Imprisoned parents and their problems’ in P. Scharff-Smith and L. Gampell (eds), Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre , 2011)

In fact, children of imprisoned parents are more confronted with various problems such as migration, drugs or violence than other children. Moreover, the child would be taken care of by the social services and help would be provided. Besides, prison could be a chance for the prisoner to become a better parent. As a result, after his release, the outcome of parental imprisonment would be positive for children. But these cases do not represent most of the cases, even if it difficult to determine what proportion they represent.

On the other hand many scholars agree to say that this incarceration is devastating for children. But here again it is difficult to generalize. Not all the children are affected in the same way; it depends on the social background, the sex of the child, his age, the length and the type of sentence but also whether we are talking about maternal or whether we are talking about paternal imprisonment. A study conducted in 1981 showed that incarcerated mothers and fathers do not present the same sort of problems with their children. Fathers reported that their children had “acting-out” behavior (such as use of drugs and alcohol, hostile behavior) while mothers reported more “acting-in” behavior such as withdrawal or acting babyish.

The very recent project COPING, conducted by a European team found that 50% of children declared that, because of the parental imprisonment there were bad effects, while for 10% the effects were good. But these good effects are not only for themselves but also for their parents. For instance a parent could stop using drugs or in some prisons he could also have some “education courses”. It emerges also from the report that girls handle their feelings better than boys, which are more likely to have behavioral troubles.

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72 R. Wolleswinkel, ‘Chapter two: Legal Background’ in Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
77 Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
78 Ibid
Additionally, the effect of parental incarceration depends on the relationship children-parents which existed before the conviction. It might be possible that one of them or both of them do not want to continue this relationship. The following testimony is striking; it is from a 15-year old boy: “I want to kill myself. Dad’s been making me take drugs into the prison for my mum. I don’t want to do it anymore. I know if I say I’m not doing it he’ll kill me. Mum’s been in prison for six months. I’ve got no friends because my dad’s a junkie, and there’s only me and my dad at home. My gran won’t speak to me anymore because dad’s a junkie”.\textsuperscript{79} In this type of cases the impact of imprisonment will be less important. In fact as it will be broached later, the lack of relationship is the main reason for children’s anxiety and malaise\textsuperscript{80}.

Apart from this, another factor may also change the impact: if the child is told the truth or not. And this is very important because lots of children do not know that their parents are in jail but rather that “he or she has a mission” or any other reason such as that jail is the place where the parent works. These “inadequate explanations of the imprisoned parent’s circumstance”\textsuperscript{81} can make the situation even worse for the child. In fact in the COPING project report, one can read that “one of the main findings is that how parents talk to children about imprisonment is crucial.”\textsuperscript{82} In these kinds of cases, it is difficult to predict the impacts, and especially to determine whether lying or the incarceration in itself would cause any impact.

In a nutshell, the consequences and impacts of parental imprisonment vary from child to child and from situation to situation. Nevertheless to get an overview of the current situation a generalization has to be done. According to several studies the effect of parental imprisonment is negative for children.\textsuperscript{83}

Furthermore, the main question regarding the effects of imprisonment is whether these imprisonments are the real causes of the change of behavior among children or whether they are consequences of their living conditions. It is a reality that prisoners are more likely to

\textsuperscript{79} Families Outside, ‘Submission to the UNCRC’ Day of General Discussion (2011)
\textsuperscript{80} E. Ayre, L. Gampell and P. Scharff Smith, \textit{Children of imprisoned parents} (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
\textsuperscript{81} L. Ayre, ‘Introduction’ in \textit{Children of imprisoned parents: European perspectives on good practice} (Eurochips, 2006)
\textsuperscript{82} \textit{Coping with a Parent in Prison: An Agenda for Policy Reform} (Conference Outcome Report, 2013)
belong to lower social class. In other words, there are more likely to be vulnerable, unemployed, with a low-wage job or to be drugs consumers. The majority of offenders have little or no professional training and limited reading and writing skills. For instance in France, at 20 years old, 9 out of 10 offenders were already out of the school system, while the average in the French population is 6 out of 10. As a consequence, children are influenced by this social background and in general children from lower social class are more likely to have behavioral disorders.

Therefore the question is difficult to answer. Several studies had been conducted and the results are different. The Cambridge Study, conducted by J. Murray concluded that “parental imprisonment nevertheless significantly predicted antisocial and mental health problems through the life-course ». On the opposite, the conclusion of the Project Metropolitan conducted in Sweden is very different. “Parental imprisonment did not predict children’s offending behavior after taking into account the effects of parental criminality.” But this difference had been explained by the special treatment that Swedish children of prisoners receive. Finally the recent survey conducted through COPING confirmed the fact that parental incarceration is “a key risk for children”.

In the frame on this thesis parental incarceration will be considered to have a real impact, because more than social background it is a really traumatic event for children. But one must keep in mind that this is not a destiny, “nothing is ever played in advance”.

2.2. What are the main consequences of imprisonment?

It is not the parental imprisonment by itself which leads to behavioral disorders but, the consequences of this act. It is obviously a very stressful event for children, such as divorce, death of one parent or even hospitalization. As written by the Right Hon the Baroness Hale of Richmond, “children can be seriously affected at each stage in that process, and each of the

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84 J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
85 M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ in Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
86 Prééocité et instabilité familiale des homes détenus (Insee, 2002)
88 Ibid
89 Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
agencies involved needs to be alive to this to see what they can do to mitigate the harm done to the children”\(^{91}\). But this will be studied later, what is necessary to notice here is that this stress is generated by some particular conditions. In fact, imprisonment means among others, separation, loss of income, loss of “human and social capital” or also of course stigmatization from the society.

\[ \text{2.2.1. Separation} \]

To begin with, the first consequence of parental incarceration is the separation. The separation is a very traumatic event for a child, who will lose his marks and basically lose the pillar of his life. All the children need their parents to grow up. Children of prisoners are not the only one to suffer pain of separation but it appears that the nature of the separation during parental incarceration is more traumatic for the children.\(^{92}\)

This could be explained first by the way of the separation takes place. Most of the time, it is violent and sudden for the child who does not understand the situation. The police often prefers to arrest person either early the morning of late on the evening. These both moments are family life moments; the child is as a consequence witness of the violence and this event will leave scars. In most of arrests, the child can see a gun, and his parent rejecting the police. All the children agree to say that it is the worst moment of parental imprisonment.\(^{93}\) According to Nell Bernstein, “watching a parent [being] arrested and taken away is itself one of the most significant traumas a child can experience”.\(^{94}\)

Then, this separation causes a loss of “human and social capital”.\(^{95}\) In other words, the child misses the parent as a person but also as an entity who took care of his life. Dr Pauline Boss created the term of “ambiguous loss” to qualify the situation when there is a “loss where a loved person is physically absent but psychologically present”.\(^{96}\) Even if one parent stays with

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\(^{92}\) J. Murray and D.P. Farrington, ‘Evidence-based programs for children of prisoners’ (2006) 20 Criminology & Public Policy 721

\(^{93}\) O. Robertson, \textit{The impact of parental imprisonment on children} (Quaker United Nations Office, 2007)

\(^{94}\) N. Bernstein, \textit{All Alone in the World: Children of the Incarcerated} (The New Press, 2005)


\(^{96}\) \textit{Coping with a Parent in Prison: An Agenda for Policy Reform} (Conference Outcome Report, 2013)
him, this event is also a shock for this later. As a result he might not be able to give sufficient energy to raise the child anymore. According to the study conducted by J Murray and D P. Farrington, “Continuous care by an attachment figure was as important to children’s development as proper diet and nutrition”. Additionally often this separation is a double one: there is also a separation of the parental couple. In Belgium, half of children helped by the association ASBL (Relais Enfants-Parents) suffer from this “double separation”. Another survey showed that in some prisons the divorce rate is estimated to be as much as seven times the national average.

The child could develop problems of attachment which is a basic common of developing behavioral disorder. Besides it is very difficult to keep contact with the parent, to retain relationship. This latest will be affected by the imprisonment. Many reasons explain this: prison regulation, location, transport, need of accompaniment, lack of privacy during the visit or else the cost of letters and calls. The blog [link] had been created to give the opportunity to children to write and talk about their experience in the United States. A little boy said: “He is in a jail far away from where we live and is behind thick glass, so I can’t ever touch him again, and we don’t have enough money to fly out to where he is in jail, so I probably won’t ever see him again”.

### 2.2.2. Keeping contact

There are two main ways to keep contact which are though visiting the prisoner or via letters and/or calls. The main way the separation could be overcome is through the visits. In fact when there is no visit, sustaining the relationship is very difficult and also limited. But visiting prisoners is a complicated process as the boy showed before. For instance in Belgium, half of children never visit the incarcerated parent. The children need a permit, and these visits could be a reward for the prisoners. In Scotland, the prisoner can have visit only if he has a good behavior and fulfill some conditions. In addition, prisons can be far from the children’s housing. For example, as Belgian prisons are full, Belgium rent Dutch jails as in

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97 J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
98 C. Frère, ‘Séparés par des Barreaux. La situation des enfants dont les parents sont détenus’ (2008) 278 Journal du droit des jeunes 4
100 O. Robertson, The impact of parental imprisonment on children (Quaker United Nations Office, 2007)
Tilburg. Hence, it means that children have to travel a lot and even cross a border. Also in France, the number of women’ jails is low, so prisoners are sent everywhere in the country which makes visits very difficult for children. In some countries, insufficient means of transport is a problem. In fact, most of the time prisons are not situated in cities but in rural areas. It means that somebody should accompany the child and also this travel could be expensive. And the family might already have financial troubles and this represents an additional burden. Consequently children meet several obstacles.

Additionally, there is a clear lack of welcome for children. First of all the security procedures could be difficult. A 14-year-old girl sums up the situation as following: “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”. 103

After that, the visit rooms are not child-friendly104, it is a scary environment, long lines before being able to see the parent, crowded situation and as a result no intimacy. The visits could be supervised by officials, which make the meeting difficult for the child but also for the parent. It is very traumatic for a child to see and to talk to his parent who is behind a glass partition. The time of visits is limited and not increased because the offender has children.

As a result visiting a parent in jail is a difficult situation, and it often occurs that parents and relatives decide that prison is not a place for child. Hence, the child will not be allowed anymore and this is very traumatic. A survey conducted in 2001 showed that in France, half of prisoners are visited by their children only once a year. Only 17% sees their children once a month. 105

Regarding the upholding of the relationship through letters and calls, it is not easy for several reasons. First of all calls can be expensive and even more expensive when the child and the

104 O. Robertson, The impact of parental imprisonment on children (Quaker United Nations Office, 2007)
parent are not in the same country. Some prisoners complained that a call in prison is more expensive than any other call in the country. In addition, there is no intimacy. The identity of the correspondent can be checked and the conversation as well. A Swedish child said during the COPING conference that, “you can’t ring him when he’s in prison, because sometimes the phones are broken and he can’t phone me and sometimes his credit goes.”

The conditions vary from a country to another, but also from a prison to another. For example, a French person incarcerated in Belgium would be allowed to one call per week. In some French prisons calls are unlimited, but they are paying and charged to the prisoner. However, more and more the prisoners can call at the expense of the prison authorities. If the child is old enough, letters can also be exchanged but they can also be read by prison’s employees. In case of different language, they would be translated so it means that it would take time. Apart from this the most common means of communication between young people such as texting of chatting on internet are not available for prisoners.

All these reasons make the retaining of relationship difficult, and make the separation very hard at the same time.

### 2.2.3. Indirect effects

Moreover, parental imprisonment might have also indirect effects such as economic deprivation and in general a radical change of life due to moves. Within a short period of time, the child might change of school, house and neighborhood.

Regarding loss of money, most of prisoners are from lower social class. In other words the families are very vulnerable and the incarceration means a loss of income. As a matter of fact the imprisonment has impacts on living standards, health or housing such as rent arrears and eviction threats. Sometime the imprisoned parents could try to send the money earned in jail to the family. But the lack of work in prison limits these possibilities. Moreover, in some countries as the, imprisonment is a reason to suspend the social help. In other words, “Going into prison [in the UK] is considered a change that can immediately remove the right to the majority of state support. If the prisoner is the named benefit receiver, their prison sentence

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107 Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
108 J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
will alter the entitlement of the family. For example, the amount of Income Support can fall dramatically or can stop altogether – leaving the family to fall below the poverty line.” As a result the family can be without any income, has to face new charges such as visits and lawyer. On average in France, relatives spend 200 euro per month for the offender, while 53% of these families have less than 900 euro a month to live.109 As said in the study conducted by J Murray and D P. Farrington, “this economic deprivation might lead to more problem behavior in children”.110

Because of this loss of money the child could have to move and change schools, neighborhood. But also and especially it could be a change of care-giver. This often happens when the mother is incarcerated because most of convicted women are care-givers of single-parent family111. In fact for example in Belgium, if the father is convicted 83% of children live with their mothers. But if the mother is incarcerated, only 25% live with their father.112 Sometimes, the care givers are also from the family, but in some countries when parents are incarcerated children are put for adoption. For instance Italian legislation allows this.113 This change is the most traumatic consequence of the parental imprisonment. However the care-giver could have mitigating role of the imprisonment’s effects as a new keystone.

2.2.4. Stigmatization:

Finally, the last serious effect of parental incarceration is the stigmatization. The offender’s family and especially children could be labeled as “different”, and be assimilated to the parent offender who is seen as evil and dangerous. In the frame of COPING, a German mother said: “There is stigmatization, and we women and children suddenly have a flaw, for which we are not responsible. We can’t go into public with this flaw. And that’s bad. Really bad.” This stigmatization is often accompanied of bullying and teasing. It leads to shame, feel of guilty, low self-esteem114 and also isolation. In short, the child could be marginalized from the society and this could lead to different worst effects such as bad school results, and antisocial

110 J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
111 O. Robertson, The impact of parental imprisonment on children (Quaker United Nations Office, 2007)
112 C. Frère, ‘Séparés par des Barreaux. La situation des enfants dont les parents sont détenus’ (2008) 278 Journal du droit des jeunes 4
113 R. Wolleswinkel, ‘Chapter two: Legal Background’ in Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006).
114 C. W. Simmons, Children of Incarcerated Parents (California State Library, 2000) 4
behavior. As Michelle, 16 years old and from England, said: “I’ve only told one of my friends but she is the closest person to me… I don’t really like telling people what’s happening to mum because they might think she’s a bad person”. Even, the family itself often takes distance from the offender.

In conclusion, parental imprisonment leads to various consequences which may be traumatic for children. Thus, it may lead to psychological impact on children themselves. As sum up by Murray and Farrington, “Prisoner’s children are a highly vulnerable group with multiple risk factors for adverse outcomes”.

2.3. What is the psychological impact on children?

Several studies had been conducted to determine whether or not parental imprisonment has a psychological effect on children. The answer is positive in most countries. The step further was then to found out some common consequences of parental incarceration on children. Children are said to be the forgotten victims of incarceration in the sense that, imprisonment may have a severe impact on children; they may suffer emotionally, socially, financially, educationally, and also health-wise. In a few words, they may suffer also a form of punishment.

The most noticed effects of parental incarceration are, missing the imprisoned parent, sadness, withdrawn behavior, sleep problems, aggressive behavior, deteriorating school performance, truancy, and sometimes delinquency.

In this section five of these behavioral disorders and consequences will be focused on: antisocial behavior, internalizing problems, delinquency and criminality, non-education, and finally mental troubles during adulthood.

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2.3.1. Antisocial behavior

First of all, it appears that children of prisoners are more likely to have antisocial behavior. According to the study conducted by Murray and Farrington in 2005, 71% of boys who experienced parental imprisonment during childhood had antisocial personalities at age 32, compared to only 19% of boys who were not separated and whose parents never went to prison.\(^{120}\) It does not mean that all the children of prisoners are condemned to become antisocial persons but they are more likely to be than other children. This antisocial behavior is often linked with internalizing problems. This latest is defined as “a core disturbance in intrapunitive emotions and moods”.\(^{121}\) Children of prisoners are more likely than others to have these two behavioral disorders.\(^{122}\) According to COPING project, “25% of children of prisoners were found to be at high risk of mental health problems, rising to nearly 50% of children in Romania”.\(^{123}\) In fact, Murray’s and Farrington’s study revealed that parental imprisonment might precipitate social and economic stresses, which might cause antisocial behavior. These stresses and antisocial behavior may cause an increase in children’s internalizing problems. According to their survey, when you compare boys who experience parental imprisonment to those who did not experience any separation, figures are striking. In fact 68% of the first category would have internalizing problems once in their lives while only 16.1% of boys who did not suffer from the traumatic event of a separation would have such problems.\(^{124}\)

2.3.2. Internalizing problems

These troubles could indeed appear any time during the life. That is why it has been noticed that depression and mental problems during adulthood is a common problem of adults who experienced parental imprisonment during their first 10 years.

According to the Cambridge Study conducted by Murray and Farrington, of adults who had experience separation because of parental incarceration when they were child (between 0 and 10 years old), 33.3% present internalizing and antisocial problems at 32 and 18.2% at 48. These figures are very striking when compared to adult who did not experience any separation, 7.2% have such behavioral problems at 32 and only 3.8 % at 48. In other words,

\(^{120}\) J. Murray and D.P. Farrington, ‘Parental imprisonment: Effects on boys’ antisocial behavior and delinquency through the life-course’ (2005) 46 Journal of Child Psychology and Psychiatry 1269
\(^{121}\) J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
\(^{122}\) Ibid
\(^{123}\) Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
\(^{124}\) J. Murray and D. P. Farrington, ‘Parental imprisonment: Long lasting effects on boys internalizing problems through the life course’ [2008] 20 Development and Psychopathology 273
separation because of parental imprisonment causes mental health problems also during the adulthood.\textsuperscript{125}

Moreover, 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 under attainment.\textsuperscript{126}

2.3.3. Delinquency

One of the main impacts of parental incarceration is the delinquency and especially the criminality. All the research concluded that many prisoners have criminal parents. Some scholars even write about transmission of offending. According to R. Shaw, indeed, children are likely to reproduce the parent’s delinquent behavior as an adult.\textsuperscript{127}

The conclusion of the Murray and Farrington’s study conducted in 2006 is: “Of boys who were separated because of parental imprisonment in their first 10 years of life, 48% were convicted as adults, compared with 14% of boys whose parents were not imprisoned (and who were not separated from parents for other reasons).” In the Project Metropolitan, conducted in Sweden, the results are similar, even if they are less shocking. “Of children with imprisoned parents, 25% offended between ages 19 and 30, compared with 12% of children without convicted parents.”\textsuperscript{128}

2.3.4. Lack of education

Finally the various consequences of parental imprisonment on children also result in the lack of education. As written by Charlene Wear Simmons: “Children are affected in other ways by parental imprisonment: for example, they tend to have higher rates of school failure and delinquency than the general population.”\textsuperscript{129} In fact the behavioral disorders result in difficulties in school. These difficulties lead children to stop school as soon as possible and do not have higher education. In addition for children who are good at school, it could be difficult to find enough money to pay the education because of the family income. Then,

\textsuperscript{125} Ibid

\textsuperscript{126} The Rebecca Project for Human Rights and National, ‘Women’s Law Centre 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’ [2010] National Women’s Law Center 13


\textsuperscript{128} J. Murray, C-G Janson and D. P. Farrington ‘Crime in adult offspring of prisoners: A Cross-National Comparison of Two Longitudinal Samples’ (2007 ) 34 Criminal Justice and Behavior 133

\textsuperscript{129} C. W. Simmons, Children of Incarcerated Parents (California State Library, 2000) 10
obviously the stigmatization has also influence on children, and especially on their well-being at school.

2.4. Conclusion
In conclusion the consequences of parental imprisonment and its impact on children are various and obviously interrelated. Among direct consequences of parental imprisonment, there is the separation, which leads to the loss of contact but also to indirect consequences such as economic deprivation or changing of environment. Obviously there is also the stigmatization. These consequences conduct to psychological impacts among children such as anti-social behavior, mental troubles during the life, delinquency and even lack of education. Nevertheless, above all, the idea emerging from this chapter is that there is a lot to be done to help these children, and especially that “children are not to be blamed or punished for what their parents have done; they are not the guilty ones” 130.

Chapter 3: Practical Recommendations and Best practices from NGO

“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?” This is exactly the issue that arises, what are the solutions and what is the situation today.

NGOs and national associations dealing with children of prisoners are numerous. EUROCHIPS, the European network of associations counts 16 full members, 7 associate members and 7 affiliate members (not only from Europe). So in total, at least 30 organizations are concerned by this issue and 27 among them in Europe. However, these organizations are the ones member, some others also exist. For instance, during the Day of General Discussion organized by the Committee on the Rights of the Child, the Italian association Comunità Papa Giovanni XXIII showed its work in the field to help these children of incarcerated parents. In fact, all these associations are active in the field, do a lot to help families of inmates and consequently children as well.

Accordingly, NGOs and associations are the ones which know exactly what are the need and thus the possible solutions. They give an important list of recommendations (Section 1), and also, sometimes they implement measures which should be implemented in a larger scale (Section 2).

3.1. What solutions should be implemented?

“Maintaining contact with an imprisoned parent is a right not a privilege.” This is in fact the main gap that children feel, and that should be filled. But this is not the only thing to do to improve the life of children of prisoners. Most of the following recommendations had been promoted by NGOs. The main NGOs regarding the issue of parental imprisonment met in September 2011 in Geneva for a Day of General Discussion about "Children of incarcerated parents" organized by the Committee on the Rights of the Child. Through the various presentations, one can notice that these actors made the same recommendations.

131 E. Ayre, L. Gampell and P. Scharff Smith, Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
3.1.1. Take children into consideration

First of all, authorities should consider children during the arrest\textsuperscript{133}. This event could be shocking for children, especially since they would not understand. The European-scale research, “Children of imprisoned parents” go further stating that “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.”\textsuperscript{134}

Then, as above-mentioned, the children need to keep a contact with the offender. And, this necessity is more complicated than just allow and promote visiting. In fact, enable the child-parent relationship to be kept in a long process which begins as soon as the parent is arrested. In order to maintain the link, the child should be said the truth immediately. From the child’s point of view not being aware of what happens to his parent is scary and makes him feel lost.\textsuperscript{135}

Moreover if not, the child will not be able to visit the parents and if the contact is not established immediately, it will not be or it would be very difficult. In fact, in France a survey had been conducted by the association Le Relais Enfants-Parents 1999 to find out when is the best moment to enable the visits. The result was that, if there is no contact during the first six months, there will be no contact later.\textsuperscript{136} According to O. Robertson, “Helping families to maintain close relationships may also help to prevent future antisocial or criminal behaviour by imprisoned parents (because having a supportive family environment to return to is a major disincentive to committing further crimes).”\textsuperscript{137}

The contact should be kept and especially though visiting. The imprisonment of parent is a very traumatic moment for children and visiting could help them. Sack and Seidler, indeed, wrote that “children were less disruptive after visiting their father in jail.”\textsuperscript{138} But visiting is a complicated process for children. Thus, that is why something should be done to help them.

\textsuperscript{133} Families Outside, ‘Submission to the UNCRC’ Day of General Discussion (2011)
\textsuperscript{134} U. Convery and L. Moore, ‘Chapter two: Children of Imprisoned parents and their problems’ in P. Scharff-Smith and L. Gampell (eds), Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre , 2011)
\textsuperscript{135} E. Ayre, L. Gampell and P. Scharff Smith, Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre , 2011)
\textsuperscript{136} ‘Maintien des liens en detention’ [1999] Relais Enfants-Parents
\textsuperscript{137} O. Robertson, The impact of parental imprisonment on children (Quaker United Nations Office, 2007)
\textsuperscript{138} Sack and Seidler, ‘Should children visit their parents in prisons?’ [1978] Law and behavior 261
First of all children need to be accompanied or when they are old enough to be allowed to go by themselves.

The recommendations made by NGOs in the establishment of a network of persons who would pick the child at home and go with him to the jail\textsuperscript{139}. These persons more than help the child for the transportation will also be a support. Jails are not welcome environment so having a person could make visits easier for kids. In addition, M-J Schmitt suggested for EUROCHIPS, to provide children “with books, posters, drawings and other tools to help familiarize them with the prison environment and prepare them for visits ahead of time.”\textsuperscript{140}

In order to maintain a strong family tie, visits should be regular. In other words, visits should be organized regarding children schedules and planned. If the visit is part of the weekly timetable, it would become usual for the child. As a result it would be less traumatic but also the relationship would be stronger.

However the relationship must remain a parent-child relationship. The parent should keep the authority, it is necessary for the child and for him to keep his points of references, but also for the parent. Authority could be maintained even if the parent is not home. In the EUROCHIPS report, it is explained that “the parental role does not necessarily require the physical presence of the parent: witness how transfixed a child can be by a deceased parent’s symbolic and imaginary presence; in this way, the parental role subsists to a certain extent. The concept of parental role is two-fold: it includes a functional role, as well as a cultural-symbolic one.”\textsuperscript{141}

Nevertheless, what is required and asked by all the NGOs is the implementation of child-friendly areas\textsuperscript{142}. In fact, as visiting a parent could be a traumatic experiment for a child it is crucial to help them to feel good and as a consequence to set up a welcome environment. As denunciated by EUROCHIPS, most of the time visiting rooms are old and need to be renovated\textsuperscript{143}. Children need at least a cozy room and also a big one. A large enough room

\textsuperscript{139} Families Outside, ‘Submission to the UNCRC’ Day of General Discussion (2011)
\textsuperscript{140} M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
\textsuperscript{141} A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006).
\textsuperscript{142} E-M Knudsen, ‘Children of Incarcerated parents’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011) 
\textsuperscript{143} A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006).
could help the young person to calm down and to be less disrupted\textsuperscript{144}. However more than renovations, the children should be welcomed. For instance they could be given plays, foods or at least beverages while waiting. And also, quite obviously provide them with sanitary services.

Additionally, parents and children need to share something more than speaking, such as daily activities. This could be enabled by child-friendly areas. It may be possible for them to share a meal is already a huge step. It reminds them their points of reference, those of a family life\textsuperscript{145}.

For young children, play areas would be the more adequate measures. When a child is four years old or even until 6, he is not able to spend more than 20 minutes talking. Playing would be a solution for the children to spend time sharing with his parent but also for the parent to be part of the child’s life. He would the parental role stimulating and awaking the infant. Moreover, it has been found that “there is a correlation between the use of play areas and reduced frequency of crying when children leave parents at the end of visits”.\textsuperscript{146}

Besides, in some countries, visits are still limited regarding their duration. For instance, in Ireland a sentenced prisoner is allowed to receive one visit a week for 30 minutes\textsuperscript{147}. This is very short for a child visit; in fact he might be stressed in the beginning and takes time to feel comfortable. This brings us to another issue. Due to the limitation, the only visit per week would more likely be a family visit. Consequently, the child does not have the attention of the offender and could be in the middle of a conflict between his parents. Not only conflicts, but parents could talk about practical things and here again the child would not be able to enjoy fully the visit. Therefore, child-centered visits should be organized\textsuperscript{148}. This does not mean that another person cannot be present but the attention should be given to the kid.

\textsuperscript{144} M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
\textsuperscript{145} “Chapter nine: Recommendations” in P. Scharff-Smith and L. Gampell (eds), Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
\textsuperscript{146} M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
\textsuperscript{148} ‘Chapter nine: Recommendations’ in P. Scharff-Smith and L. Gampell (eds), Children of imprisoned parents (The Danish Institute for Human Rights, the European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, 2011)
Furthermore, regarding visits, this represents a cost for families. Thus, this could prevent families to visit the offender. In order to enable them to keep family ties, financial help should be given, such as vouchers for transportation. EUROCHIPS suggests an "access to paid jobs for parents with families to allow them to support their family’s needs despite incarceration."  

Additionally, keeping contact in not only a matter of visiting or of calls and letters. According to E-M Knudsen, States should “supports the development, provision and evaluation of innovative programs that promote and facilitate improved contact and positive parenting”. Maybe European countries should follow The United States. In fact there is a willingness of allowing the internet contacts between prisoners and the family, and they already implemented “Inmate video visitation”. This system exists in more than 20 states and enables family to see the prisoner without suffering from the transportation and particularly from the cost of the trip.

3.1.2. Consider the family during sentencing

Prisoners are not only offenders but they are also persons who might have a family. More than desirable, it is necessary to take family into consideration when sentencing. The Courts should inquire to know whether if the person has a family or not. For example giving prisons which are close from the family house or use electronic tags.

In particular, children should be considered. Not only in the sense that the offender has children but also their opinions and points of view. Children should be consulted, because it is the best way to determine what their best interests are. Of course, this depends on the age and the maturity of the child.

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149 A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
150 E-M Knudsen, ‘Children of Incarcerated parents’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)
153 Action for Prisoners' Families, ‘Submission to the UNCRC’ Day of General Discussion (2011)
154 Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
The Quarter United Nations Office (QUNO) in its report explains that “Children should be consulted in determining the extent and type of relationship they want with an imprisoned parent and it should be remembered that one child’s wants and best interests may differ from another’s, even within the same family.”\textsuperscript{155} In fact, some child might refuse to establish any relationship with the parent. Here should be reminded that this is a provision of UN Convention on Rights of Children. Article 3.1 states that the best interest of children should be taken in consideration or decisions concerning them.

Moreover, when sentencing children should be taken into consideration in the sense of sentences should be different. In other words, having children could be mitigating circumstances. Obviously we are not talking here about rapists or parents being violent with their children. Still the QUNO report about impacts of parental imprisonment approaches this topic. It is recommended to choose “alternative sentences, such as those utilizing principles of restorative justice.”\textsuperscript{156} These types of sentences, such as non-custodial sentences, could be good for the family life, but also for the offender\textsuperscript{157}. He would be punished anyway, but in this case the re-integration in the society in the end of the sentence would be far easier. Consequently, this is also good for the community because it means that he would less likely re-offend. From the child point of view, this event would be less frightful and he also, will not suffer from an impact such as criminality when being adult. In fact children need care and affection.

\subsection*{3.1.3. Providing data}

There is a serious lack of data concerning children of prisoners.\textsuperscript{158} All the NGOs but also other actors agree about this recommendation. At the European Level nobody can say precisely how many are they, what are their social backgrounds or if on average they are able to maintain a relationship with the inmate. Only some small surveys had been conducted, most of them are national surveys. The exception is of course the COPING project, but still limited to four countries. Without reliable data it is extremely difficult to take measure, especially since it is laborious to evaluate the extent of the issue. To sum up, “States should support academic research into the needs and experiences of children of prisoners, and all

\textsuperscript{155} O. Robertson, \textit{The impact of parental imprisonment on children} (Quaker United Nations Office, 2007)

\textsuperscript{156} Ibid

\textsuperscript{157} Families Outside, ‘Submission to the UNCRC’ Day of General Discussion (2011)

\textsuperscript{158} R. Enroos, ‘Children in prison- a perspective from research’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)
prison services record basic information about all prisoners’ children in a consistent and quantifiable manner”.

3.1.4. Psychological help
Families in general, but children particularly should be helped to overcome the ordeal. In other words, they need psychological support to deal with the impact of imprisonment\footnote{E-M Knudsen, ‘Children of Incarcerated parents’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)}. In fact, the imprisonment is a separation, kind of mourning for the child. However the States should provide this possibility to visit a psychologist because, as above-mentioned, family suffer from the lack of resources\footnote{A. Bouregba, ‘Soutenir les relations enfants-parents compromis par l’incarcération: un enjeu de santé publique’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)}. Consequently they would not spend their money in such things but more in supplies. This recommendation is also linked to the one suggesting that States should provide financial help to families. But obviously this one is a really tricky issue: how to explain to the society that the family of somebody who broke the law would get financial help.

3.1.5. Training
There is a real need in forming all the persons who could enter in interaction with the child\footnote{SOS CHILDREN’S VILLAGES INTERNATIONAL, ‘Submission to the UNCRC’ Day of General Discussion (2011)}. Of course, one could think about criminal justice professionals and prisons staff. In fact, "professionals do not always know how to help families because they themselves have not received adequate training or support on relevant issues."\footnote{M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)} Their situation is difficult; they have to be strict about security issues. However, they should also be more attentive to children while they are executing their security duties\footnote{C. Morga-Amstrong, ‘The work of Parc Supporting Families at HMP & YOI Parc-Wales UK’ Submission to the UN Committee on the Rights of the Child- Day of General Discussion (2011)}. Also teachers, who are often crucial in children life should be attentive to the child and especially avoid stigmatization. However like prison staff, they should be trained because it is a tricky situation.
3.2. Best practices

The situation is not as bad as it seems to be when reading recommendations. There are, indeed, some very actions and measures taken whether it be by the NGOs or by States.

3.2.1. NGOs’ best practices

As mentioned above, NGOs and associations are the closer from the reality and the situation. Thus, here it is interesting to present their work. In fact, they are the ones who implemented good practices. Many of them should not be limited only to one country.

The first very good initiative is the website http://www.ontheinside.org.uk/. It provides children and care-givers with help and advices to handle the situation. The home page gives three options: kids, young of care-givers. The part for kids explains “this site tells you a bit about what goes on in prison, so you can imagine what your parent or care-giver is doing, even though you're not there. We've also explained what happens if you go to prison for a visit”.

Children can also find testimonies from other children, a part “Where can I go to get some help?” and “Tops tips”. For example, to take some change to be able to use vending machines in the visit room. The “Young people” section is very similar; however in addition there is a chat and a part “What do other kids like me think?” The final section dedicated to care-givers gives advice to talk to children about imprisonment, where to find help and also dealing with media.

Associations also try to help family to maintain the link. The Relais Enfants-Parents (REP) in France, among other associations in Europe, accompanies children to prisons. The association forms volunteers who will be responsible to conduct a child to visit his or her parent. However his responsibility is not only to be a driver but after picking the child up, driving him to the prison, the volunteer stays also during the visit. Most of the time, a child will be accompanied by the same volunteer, in order to create a feeling of trust and serenity. Some exceptional events such as holidays, Mother’s or Father’s Day, are also organized by the REP. Children have the opportunity to have special visits. This initiative is a way to reinforce the relationship between the child and his/her parent in prison.

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166 M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
Regarding the quality of visits, REP (but also ASBL Relais Enfants-Parents Belgique), implemented some “espaces enfants”. These areas are made for children and are basically play areas. First of all these areas are child-friendly, so the child could feel comfortable, then some games are provided in order to enable parents to play with children and to have physical affection.167

Visits are the main actions of associations, and initiatives are various from a country to another, the EUROCHIPS report give other examples. In Ireland, incarcerated mothers can share a meal with a child. In England, HMP Holloway implemented 20 years ago visits for children which last the whole day. Thanks to all of these various associations, children and parents could see each other in cozy and serene environment.

More than visits, in order to restore or maintain the relationship, the associations implement activities for the family. Two main initiatives should be remembered. First of all, in Belgium and in France, parents could be part of craft workshops. In other words they can create objects for children. The aim is to show to the child outside the parent’s affection.168 REP from Rouen in France explains the principle on its website. These workshops are organized by psychologists or specialized educators, so it is also a moment to share and talk about separation. The particular branch from Rouen also organized through the workshop the realization of a fresco in the visit room.169

The second important initiative give the opportunity to parents to record themselves reading a book and then to send the tape or CD to children. This is implemented by the English association “Storybook dads” who works in over 100 UK prisons. The principle is explained for family on the website. First the prisoner chooses a book, and then the prison should give him a computer. Music and effects could be added and then the CD is sent to the child.170 Impacts of this activity is, according to the QUNO report, “strengthening the parent-child relationship, raising the self-esteem of prisoners and improving literacy among both children and prisoners. Prisoners who have participated in these schemes have regularly reported that

167 Ibid
168 A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
169 Ateliers auprès des parents détenus <http://rephn.fr/missionsujet3.html> accessed on 1st April 2013
170 Info for families < http://www.storybookdads.org.uk/page112.html> accessed on 1st April 2013
their own literacy level has increased as they read the books”. 171 As an example, the association’s website gives a testimony from a prisoner’s wife “When Kyle’s Daddy went to prison, Kyle developed some behavior problems. But since getting the CD, just hearing his Daddy’s voice has improved his behavior 100%.”172

Then, associations also help parents, those in prisons and those outside. These latter have to deal with the family life, the separation and all the consequences due to the incarceration. This help is mainly based on support group help. In fact, these parents (both inside and outside) need to share their experience and to talk about their difficulties to other persons in the same situation. In Italy, for instance, the association Bambinisenzasbarre, implemented “Gruppi di parola” (Talk groups). They are meeting with fathers and mothers in jail who will talk about issue regarding their children and especially the relationship. 173 In addition these talk groups could also be implemented for children. J.M Schmitt and her team (for EUROCHIPS) gave the example of the Norwegian association Foreningen for Fangers Pårørende. This association “working on behalf of offenders’ family members and friends, supports young people aged 13 to 20 by providing a meeting for them to share their experiences, thought and questions”174

To finish with, associations also train prison staff. In England and Wales, the association Kids VIP provides all the prison staff with training. First of all staff would learn theoretical information such as impacts of parental incarceration or the importance of family ties. Then they are taught how to act. This is very basics recommendations, such as being child-friendly, smiling, giving clear explanations to the child, and especially having a non-judgmental approach to the family. 175

To sum up, association and NGOs are very efficient but as they are associations, they have a clear lack of money, resources and means. Thus the ablest to do effective actions are States, but their actions are implemented sparingly.

171 O. Robertson, The impact of parental imprisonment on children (Quaker United Nations Office, 2007)
172 Our impact < http://www.storybookdads.org.uk/page123.html> accessed on 5th April 2013
174 M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
175 M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
3.2.2. States’ best practices

Some States across Europe took also initiatives and implemented good measures. Regarding the French system, it appears that the government implemented the “Unités de visite familiale (UEVF)”. Some other countries such as Denmark, Scotland, Finland or Netherlands among others already had it. The French Justice Minister explained on its website that these UEVF are small apartments with 2 or 3 rooms. In France 47 UEVF are used and implemented in 17 prisons. The principle is simple; offenders sentenced to long sentences can receive their family. This visit can last from 6 to 72 hours and is allowed once per quarter, or 4 times a year.\(^{176}\) The visits are private, prison staff can check several time is everything is going well but using an intercom. However some conditions are required to be allowed to use this special opportunity. Only close family or other very close persons could come. Legal proof or “evidence of a legitimate emotional bond to the offender”\(^{177}\) should be provided. In addition request should be done, and visitors would be interviewed before allowing them to enjoy the UEVF.

In Spain, there is also some possibility to have more intimate visits. These visits are enabled for families and partners. But there are shorter than the French ones, in fact there can last from one to three hours. These ‘private’ visits have to be requested and can be refused for security reasons. Only one visit like this is allowed per month. They take place in private room and only during these visits physical contact is allowed.

Besides, even if these initiatives are very helpful for the families, the financial cost is still present. United Kingdom is the only country where families could get financial help. This governmental program is called The Assisted Prison Visits Unit. The government gives information about in a booklet available online.\(^{178}\) First of all, different types of persons can apply, close relatives (such as children, brothers and sisters or parents), partners, or a sole visitor fulfilling some requirements. But all these persons must be more than 18 years old. As a consequence, an escort to prisoners’ children could also be granted with this help. This help covers various expenses due to the visit. It covers public transport, meals, necessary overnight


\(^{177}\) M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)

stays and child care. However this financial help is not unlimited, in fact it covers a visit every 14 days and criteria to receive it are strict, a lot of proof must be provided.

Regarding to the need of parents to share their experience and to talk with people in the same situation, Sweden created parental "study circle" in prisons. These circles are hold by trained prison staff. More than only talking, this program also includes parenting courses for both mothers and fathers. A survey was conducted by Ulla-Carin Hedin in 2005 to determine the impact of these circles. According to data, 90% of participants were happy with the program, even if some of them said that the discussion showed problems but were too short to give solutions. As a result one can say that incarcerated parents thank to this program, understand what the problems are. One comment made by a participant was, “This is very helpful, especially for those parents, who do not meet their children regularly”.

Finally the predominant measure is the one implemented in Germany. In fact, “in some prisons, imprisoned mothers with school-aged children can return home on a daily basis to take care of their families and household.” They can decide whether to sleep home or to spend the day at home. Obviously this program is not possible for all the mothers and varies from Land to Land in Germany. The example given in the EUROCHIPS report is the one of Berlin. There, a mum can be home for 16 hours a day and can for example prepares children for school and also take care of the house. In my opinion, this measure is the most adapted, at least for children. The situation is still difficult for them but they do not completely lose their points of reference. There is no doubt, children need their parents and even with all the best visiting system, there will be impacts.

3.3. Conclusion

In conclusion, NGOs mostly agree on recommendations. They highlight the need to take children into consideration, especially during arrest, and after through visiting process. This consideration should also apply during the sentencing process, children should be indeed consulted and sentences should take into account that offenders have families. In addition, NGOs remind that there is no data available and thus that States should set up measures to

179 A. Bouregba and U-C Hedin, Chapter three: ‘Parenting and prison’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
180 U-C Hedin, ‘Chapter three: Parenting and prison’ in Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
181 M-J Schmitt and others, ‘Chapter four: Children visiting prisons’ from Children of imprisoned parents: European perspectives on good practice (Eurochips, 2006)
provide this data. States should also provide psychological help to families and establish training for prison staff.

However, it appears that regarding the situation a lot of efforts have been done both by NGOs and also by States. For instance, in France and Belgium some child-friendly areas have been created by NGOs or financial help to families in United Kingdom. But these measures are not uniform in Europe and sparingly implemented.
Chapter 4: Analysis

According to Marshall, children with imprisoned parents are ‘the invisible victims of crime and the penal system’. But as said before, the protection of victims is a fundamental principle of the criminal law framework. And more generally most of legal instruments aim to protect these fragile persons. As a consequence, it is interesting to determine what should be the position of children of prisoners in regard to the law. NGOs and associations formulate practical recommendations, regarding what they notice in the field. From the international law point of view, it appears that today to implement practical changes and especially large scale changes the solution is a legal instrument. Having the legal framework and the practical recommendations drawn by the NGOs, it is necessary to compare them in order to determine if they match.

4.1. Arrest

The first recommendation is regarding arrest. It is said that that children should be taken care of during this ordeal.

This recommendation falls within the scope of article 3 of the Convention on the Rights of the Child (CRC) and especially the first paragraph. This latter, as mentioned above, stipulates “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.”\(^{182}\) Also the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Guidelines on child friendly justice), provides that “Police should respect the personal rights and dignity of all children and have regard to their vulnerability.”\(^{183}\).

To conclude on this recommendation, two instruments could apply in order to protect children from harms due to arrest. However one of them, the CRC, is really vague and the other, the Guidelines on child friendly justice which is more precise, is not binding. Thus there is no efficient tool yet, but enforcing the Guidelines could create one.

\(^{182}\) UN Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) 1577 UNTC 3 (CRC), article 3(1)

4.2. Keeping contact

The second recommendation requests for the keep of contact between the imprisoned parent and children.

Obviously, this recommendation is in the scope of article 3 of the CRC, which regards best interests but it is also in the scope of various other ones. Article 9 of the CRC regards “the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents”. In addition at European level, the European Union resolution concerning women in prison and the impact of the imprisonment of parents on social and family life also “asks Member States to make it easier for families to stay in touch, in particular imprisoned parents and their children.” Article 8 of the ECHR protects family life, and correspondence. Finally, the European Prison Rules, from the prisoners’ point of view provide that “Prisoners shall be allowed to communicate as often as possible (...) with their families, (...).”

Thus, there are various tools to guarantee the contact between prisoners and their children. The CRC provides two articles, the ECHR one and both the European Union resolution and the European Prison Rules require concretely a regular contact. Here again, the instruments are present but not implemented. Hence the solution is simple: the previous instruments should be binding. Clearly, it is not required that all these instruments become binding. However, if the European Prison Rules for instance are binding, it would be an enormous step in favor of prisoners and consequently in favor of children also.

4.3. Visiting

The following recommendation is basically to facilitate visits and provide children with good conditions of visiting.

The above-mentioned article 3 and 9 from the CRC could be used to set up this recommendation. Then, article 8 of the ECHR, has been interpreted by the Court on Human

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184 UN Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) 1577 UNTC 3 (CRC), article 9(1)
185 Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (adopted 13 March 2006) EP Res 2007/2116(INI), Para 24
Rights as protecting family visits.\textsuperscript{187} Again, the European Prison Rules give a provision to allow prisoners to receive visits.\textsuperscript{188}

However, regarding the precise and practical recommendations related to visits, the legal framework in very weak. NGOs request child friendly areas, the augmentation of the duration of each visit and financial help to enable families to go to prisons. Only article 3 of the CRC, which focuses on best interests of children, could be used in favor of these recommendations. This is also the case for the request for psychological help.

In short, regarding visits of prisoners and especially the conditions there are no real tool. There is a gap, because it is recommended to allow prisoners to receive visits but nothing is said regarding conditions such as child-friendly areas. Thus, here a new instrument, such as Guidelines to make prisons more child-friendly, seems to be adapted.

4.4. Considering families during sentencing

Another recommendation is the one which concerns taking families into consideration when sentencing.

Here again, article 3 of the CRC could be applied because obviously it taking families into consideration concern the best interest of children. However, more precisely, article 12 provides “States Parties shall assure to the child who is capable of forming his or her own views (…)” and “For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child”.\textsuperscript{189} Thus this recommendation finds a precise legal base with this article. Also, in the European Parliament resolution on the particular situation of women in prison, there are concrete requests regarding this recommendation. For instance, paragraph 19, “Recommends that alternative penalties to imprisonment, such as community-based sentences, should be favored to a greater extent, (…), where their imprisonment could result in serious disruptions to family life (…)”.\textsuperscript{190} And about children, it “insists, (…) on the need for the judiciary to ascertain whether there are children to consider before taking a decision”.\textsuperscript{191} Finally, article 3 of the European

\textsuperscript{187} Lavents v. Latvia App no 58442/00 (EctHR, 28 November 2002)
\textsuperscript{188} European Prison Rules (adopted 11 January 2006) CM Rec (2006)2, rule 24.1
\textsuperscript{189} UN Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) 1577 UNTC 3 (CRC), article 12
\textsuperscript{190} Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (adopted 13 March 2006) EP Res 2007/2116(INI), para 19
\textsuperscript{191} Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life (adopted 13 March 2006) EP Res 2007/2116(INI), para 21
Convention on the Exercise of Children's Rights concerns “the right to be informed and to express his or her views in proceedings”. And this right means, that “in the case of proceedings before a judicial authority affecting him or her [the child] shall be granted, and shall be entitled to request” the right “to be consulted and express his or her views”.\textsuperscript{192} Also, the Guidelines on child friendly justice provide “the right of all children (...) to be consulted and heard in proceedings involving or affecting them should be respected”\textsuperscript{193}.

To conclude, this recommendation has a complete legal framework. However, here again apart from the Convention on the Exercise of Children's Rights which is binding for 17 States, none of other instruments are binding for States. Hence, as mentioned for the previous recommendations, they (or at least one of them) should become binding.

4.5. Training prison staff and collecting data

Then, NGOs ask for the training of prison staff. In fact, as mentioned above, children may be victim of violence or “unfriendly” behavior from these persons.

Three legal texts could match with this recommendation. First, article 2 of the Convention on the Rights of the Child, protect children from discrimination. In fact, “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”.\textsuperscript{194} However, according to different testimonies\textsuperscript{195} children of prisoners feel stigmatization from prisons’ guardians when visiting the imprisoned parent. Stigmatization is a form of discrimination on the base of “family members”. In addition, article 19 which protects “child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment”.\textsuperscript{196} This article can be interpreted as a protection of children from the behavior of the prison staff. Finally more practically, the Guidelines on child friendly justice explicitly provide that States should

\textsuperscript{193} Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2abc, Article III(A.1)
\textsuperscript{194} UN Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) 1577 UNTC 3 (CRC), article 2
\textsuperscript{195} Coping with a Parent in Prison: An Agenda for Policy Reform (Conference Outcome Report, 2013)
\textsuperscript{196} UN Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) 1577 UNTC 3 (CRC), article 3
“ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training (...)”\textsuperscript{197}

In closing, there legal bases but there are not implemented according to NGOs for training prisoners. As for previous recommendations, the solution is to make instruments binding.

Finally, the last recommendation is a request for collecting data. However, there is no legal document which could match with this recommendation. Therefore there is a clear lack of tool, and a binding text must be created in order to oblige States to collect data.

To sum up one can say that there are legal bases for most of recommendations but they are not used to implement these recommendations. In other words, they are not effective enough. In addition, these legal bases seem to be disparate, from different institutions and there is no homogeneity.

\textsuperscript{197} Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2abc, Article V(f)
Chapter 5: Intermediate Conclusion

It is impossible to determine what would be the best solution to help and protect children of prisoners. The only certitude is that something should be done. As a result this section will only provide propositions and recommendations. First of all, current texts should become binding or be enforced (section 1). However, remains the question if a new instrument should be created (section 2) or maybe several specialized instruments (section 3).

5.1. Enforcement an implementation of current texts

The first chapter related to the legal framework, as well as the fourth one highlight the fact that there are various instruments related to the relationship between prisoners and families which could be used to protect children of prisoners. However, these texts are not enforced or not implemented as a protection of children prisoners. National laws, indeed, provide rarely measures.

Several provisions from the UN Convention on Rights of the Child could protect children of prisoners, regarding best interest, right to be heard in legal proceedings, or the right to be protected from psychological or physical violence\textsuperscript{198}. But these rights are not applied in the field of parental imprisonment. As a result the UN Convention on Rights of the Child should be implemented into a European global legal instrument and into national laws in relation with prisoners’ children.

In addition, the European Parliament Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life, provides concrete measures in favor of children and is not only applicable to women and incarcerated mothers but also to fathers. However, the resolution from the European Parliament are not binding, it is just a suggestion. These instruments are used to influence Member States but without any legal obligation.\textsuperscript{199} The current result is not really satisfying so this resolution should be followed and especially implemented in national law.

Finally, the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice are a very relevant tool. It is indeed very complete and precise regarding the

\textsuperscript{198} UN Convention on Rights of the Child
\textsuperscript{199} N. Moussis, Access to European Union law, economics, policies (European Study Service, 2008)
place and protection of children during proceedings. But as the two previous texts its influence is limited. As a result these guidelines should be implemented in national law, and as the measures are concrete it would be very efficient.

Thus, the first step in improving children of prisoners’ life is to make instruments enforceable. Not all of them, however the most relevant ones such as the Guidelines on Child Friendly Justice, European Parliament Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life and the UN Convention on Rights of the Child

5.2. A new instrument?

Nobody knows if a new instrument would be the good solution. In fact all the above-mentioned instruments did not fully work in the sense that even if we have seen some initiatives from States, they are limited and disparate. However, all of these instruments have not been made specifically for children of prisoners. As a result this solution might not be the best one, but it is a solution. This thesis focuses on the question of a “European legal instrument” but this is a wide expression, so some recommendations and propositions regarding the characteristics will be drawn.

First of all, the word “European” can have different meanings. The legal text could be done either by the European Union (EU) or by the Council of Europe (CoE), which are the two main entities at European level. As seen above, both entities have achieved steps regarding the issue of imprisoned parents. In my opinion the Council of Europe would be more likely to erect a useful, respected and applied instrument. It is, indeed, a vaster organization. All through this work, it has been showed that problems affecting children of prisoners are not limited to some part of Europe but are, more or less, everywhere.

However, a new instrument does not mean a convention. In fact there are numerous conventions already. And it would not be the most efficient for the issue of parental imprisonment. Some other texts could be possible such as protocols. In fact the NGO POPS recommended the creation of a protocol to the CRC\textsuperscript{200}, so it could also be a possibility at

\footnote{POPS (Partners of Prisoners and Families Support Group) Submission to the UN Committee on the Rights of the Child - Day of General Discussion (2011)}
European level. Nevertheless it seems that what is needed is a text which provides concrete measures.

This leads to the following propositions. The creation of a guideline or several guidelines from the Council of Europe seems to be an effective possibility. In fact it would be a solution to provide States with precise obligations. In reference with the current legal framework, another proposition is to add a part to the European Prison Rules dedicated to the issue of children of prisoners but those outside. However this part should be binding and not based on recommendation as the whole instrument.

5.3. Various instruments
As concluded in Chapter 2 and 3, there is a real need for precise and concrete measures. NGOs highlight the needs in the field to protect children from all the psychological impacts such as anti-social behavior and mental troubles. The practical recommendations are really precise, hence now the requirements are known.

The result of this is that the most efficient way to deal with this issue may be the implementation of several instruments on precise topics. The aim would be to establish European standards for States as positive obligations. In order to do this, it seems that following the example of the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice would be the best.

Thus, examining all the recommendations drawn by the NGOs, two other texts must be created as guidelines. First of all, many recommendations regard the protection of children of prisoners within the prisons. In order to reach tem, Guidelines on child friendly prisons should be erected. This text could join recommendations concerning visits, such as child-friendly areas or longer visits for children, but also recommendations about the behavior of prison staff. Also, it could fill the lack of data in requesting from prisons a systematic registration of children and their situation.

In addition, several recommendations ask for national measures such as financial help to families and associations or psychological help to children. These recommendations could be bring into Guidelines on actions towards offenders’ families.
5.4. **Legal recommendations**

Given these elements, there are some main legal recommendations which could lead to a significant improvement of children of prisoners’ situation.

1. Current relevant legal instruments, such as the ‘European Parliament Resolution on the particular situation of women in prison and the impact of the imprisonment of parents on social and family life’ and the UN Convention on Rights of the Child- should be enforced or implemented into national laws;
2. More significantly, the ‘Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice’ should become binding;
3. Guidelines on child friendly prisons should be created including systematic collect of data regarding children of prisoners;
4. Guidelines on action towards offenders’ families should be erected, including measures to support associations;
5. An awareness-raising campaign should be launched in order to promote the children of prisoners’ situation.

These recommendations cover most of the NGOs recommendations. However, regarding the two guidelines, they should be drawn in cooperation with associations and NGOs in order to guarantee a real effectiveness of the texts.
Conclusion

To conclude, the situation of the children of prisoners’ is worrying. Phenomenon of parental incarceration leads to various consequences such as separation, lack of contact or stigmatization. In addition, these direct consequences can provoke anti-social behavior, delinquency or lack of education among children.

Moreover, there is a legal gap in regarding the protection of children of prisoners. Although there are some instruments and tools which could be used to protect children of prisoners, texts providing these instruments are not binding and thus, are not implemented in national law. Furthermore, these instruments and tools are disparate. Provisions targeting children are scattered between various instruments, making the implementation of such measures challenging for the States. Hence, the majority of States do not have national laws and processes to protect prisoners’ children.

NGOs working in the field provide several recommendations corresponding to their observations. However, these recommendations concern various fields and are distinct from one another. It appears that there are measures in legal texts which could be used to implement these recommendations. However, the analysis of the situation shows that they are not. The main reason for the latter seems to be imprecision of the legal provisions and the diversity of the recommendations.

The recommendations made above combine the already established recommendations by the NGOs, which could be added to legal documents. On the basis of these recommendations, it would be necessary to establish 2 legal documents, the Guidelines on child friendly prisons and the Guidelines on action towards offenders’ families, and to enforce the existing Guidelines on child friendly justice. The establishment of these guidelines would be a first and significant step. However it will not improve the situation completely. In order to change it, the Guidelines must be binding on States, and the public opinion must change to prevent the stigmatization of offenders’ families.

In addition, the implementation of the measures from the proposed and already existing Guidelines by States should be made correctly. In other words, the Guidelines give some considerations and possible routes but the States are responsible for the effective application.
Accordingly, the issue of children of prisoners and Human Rights goes further than only the question of establishment of a legal instrument on European level. It is a worldwide issue including various factors and actors. However, it appears that the main actor, and thus the more likely to be able to improve prisoners’ children lives, is the State.

Thus, a question arises what will be the triggering factor which will enable the implementation of policy in favor of children of prisoners? Could it be the petition launched by EUROCHIPS201, which asks for the promotion of quality contact for children with their imprisoned parents? Or maybe the third annual European Prisoners' Children Week which uses the motto “Not my Crime, Still my Sentence”? The question remains and the hope too.

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