



Mothers and Babies in Incarceration

1. Introduction

The issue of babies and very young children who remain with their mothers in a prison environment is a very contentious one which raises important questions. At present, infants of mothers who are sentenced, and those of mothers who are pregnant when they are sentenced, are permitted to stay with their mothers until they are two years of age. What effects does the environment of a 'total institution' have on the very young? What are the consequences of attachment and loss for both mothers and their babies? What are the statutory implications for these babies once they are removed from their mothers' care? These children are the unintended victims of crime and the judicial process.

While the terms 'incarcerate' and 'imprison' are synonymous, the former term has been used deliberately as it best illustrates the severe reality of prison as a total institution. The sociologist Irving Goffman describes a 'total institution' as "a place of work and residence where a great number of similarly situated people, cut off from the wider community for a considerable time, together lead an enclosed, formally administered round of life".ⁱ Prison is the ultimate 'total institution'.

2. Women in Prison

According to the 2012/2013 Department of Correctional Services (DCS) annual report, there are 242 correctional centres in South Africa which accommodate 150 608 inmates. Out of these, only eight are exclusively for women, while 72 accommodate both male and female prisoners.ⁱⁱ

A 2011 study conducted amongst women in Pollsmoor and Worcester prisons in the Western Cape indicated that 64% of female prisoners are under the age of 40. 75% of them had children, and

45% had had their first child between the ages of 16 and 20. Approximately half had not completed high school. About 50% of the research sample had regular employment, and many had been the sole breadwinner prior to their imprisonment. Many experienced themselves as poor in relation to others in their communities and many offences were economically motivated. The average length of sentence being served was eight and a half years.ⁱⁱⁱ

The Minister of Correctional Services, Sbu Ndebele, recently expressed concern at the growing number of women prisoners and noted that the number had increased to about 5 000, most of whom had been incarcerated for drug-related offences. However, while the number of female prisoners has risen significantly, as a group women constitute a very small percentage of the total prison population. The Minister also noted with concern that a considerable number of imprisoned women had been incarcerated for murdering their intimate partners.^{iv}

Despite their small numbers, female prisoners have specific needs, mainly in the fields of health care, pregnancy, child birth and childcare. South Africa, however, does not have a clear policy framework in this field. The Constitution deals with the rights of prisoners in general, but there are no laws or regulations tailored to the needs of female inmates. This is especially the case for women who are pregnant and for mothers of infants and very young children. An infant or young child is permitted to remain with its mother until the age of two. Some are born in prison, while others arrive with their mothers.^v

3. The African Charter on the Rights and Welfare of the Child

In terms of Article 30 of the African Charter on the Rights and Welfare of the Child, “States should provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of breaking the law.”^{vi} This is in line with the widely-held legal principle that, in all matters affecting a child, it is the best interests of the child which must be prioritised. It is, of course, extremely difficult to align this principle with society’s right to restitution. However, the imprisonment of the mother should not serve to punish or deprive the child.

According to a report by Penal Reform International (PRI) entitled ‘Protecting Children in Prison’, growing up in a prison can be traumatic, but it is often seen as the only option. Separation from a parent is also traumatic, which is why authorities try to make basic provision for babies and young children within the confined context of a prison. Moreover, as the Howard League for Penal Reform emphasizes, “forcibly separating a baby from his or her mother should only be done to protect the welfare of the child”.^{vii} Allowing babies and young children to remain with their mothers is presumed to be in the ‘best interests of the child’ and each case is considered on merit. As Anne Jbara points out when writing in support of prison nurseries, “the emotional value of allowing mother and child to bond, while simultaneously giving incarcerated mothers an opportunity to learn about the basics of being a parent, both from a practical and an emotional standpoint” is critically important, and is increasingly recognized by prison authorities and child care experts.^{viii}

4. The Prison Environment

The PRI report notes that there is a lack of provision for children born in prison: “Often the lack of dedicated resources puts children’s well-being at risk. Not enough is done to promote alternatives to custody for mothers with young children; for example, education and rehabilitation programmes or early conditional release.”^{ix}

It is difficult to find an accurate number for babies and young children living in prison, since the information given by different sources varies considerably. It seems that at any one time there

may be between 70 and 150 babies in South African prisons. Pollsmoor prison in the Western Cape pioneered South Africa’s first dedicated unit for mothers and their babies to “ensure that babies in lock-up are not punished for their mothers’ crimes”.^x

The women’s section of the Johannesburg prison is in the process of setting up a similar unit. This is similarly the case at Durban prison. According to DCS spokesperson Manelisi Wolela, “information relating to parenting is given by health-care providers and after pregnancy”.^{xi}

The criminologist David Green warns that special privileges for mothers with babies may be open to exploitation. He comments that “this is a worrying trend and deeply regrettable for the children who are spending their infancy in jails. But culpability lies with their mothers. Nobody should be spared a custodial sentence on the ground that they have children. Prison acts as a deterrent – we cannot send a message that people with children will get away with crime”. Alternative imprisonment options for pregnant and young mothers should be structured in such a manner that they are not open to exploitation. The rights of the victim, the offender and the community must all be taken into account.

However, others conclude differently and point out that “keeping families together outweighs the retributive value of incarceration. While non-traditional, this approach to imprisonment is useful for both its deterrent and rehabilitative aspects and may even create multigenerational benefits”.^{xii} This approach would seem to be more in line with ‘the best interests of the child’ standard.

5. Repatriation Policy

The South African Department of Social Development has a policy of repatriation for infants born in foreign prisons, spearheaded by Minister Bathabile Dlamini. Sixteen children born to women held in foreign jails were repatriated during 2013. Nine of the 16 babies were born in Brazil. Four more babies, currently in Bolivia, Hong Kong, Mozambique and Tanzania, are awaiting repatriation.^{xiii} Most of the mothers concerned have been convicted of drug-related offences such as trafficking or acting as ‘drug mules’.

6. The Children Outside

Statistics indicate that most women prisoners have children who live outside prison. Many of these mothers find it very difficult to remain part of their children's lives. The prisons may be a long way from home, which makes visiting difficult and expensive. One study indicated that 63% of all female prisoners lived more than 100 kilometers away from their homes.^{xiv} Close contact over an extended period of time is hard to sustain, and there are many instances of mothers losing contact with their children. Prisons are forbidding places to visit, particularly for children who are often uncomfortable in unfamiliar places. It should be remembered that children's perception and experience of time is very different from that of adults, and that this can cause children more easily to feel abandoned. In addition, they may have to cope with the social stigma of having a parent in prison.

As for the mothers, those "who, prior to incarceration, were significantly involved in their children's lives, may suffer mentally and emotionally as a result of missing out on their children's daily lives and losing an opportunity to participate in their upbringing".^{xv} Many women prisoners have been the primary care givers of their children prior to their incarceration. The disruption in the life of the child whose mother goes to prison, leaving him or her behind, cannot be overestimated; it must have considerable consequences for the child's psycho-social well-being. Those children who cannot be placed with family members will enter the foster-care system and some may be adopted. The lives of these children will be changed forever.

Every effort must be made by the prison authorities to facilitate contact between mothers and their children beyond the prison walls, for example through telephonic contact, the exchange of letters and photographs, or the exchange of small gifts.

Wherever possible, alternatives to imprisonment should be considered.^{xvi} Electronic monitoring would reduce the cost to the taxpayer per prisoner by almost two-thirds. Importantly, it would substantially diminish the negative consequences of imprisonment for mothers with babies and young children. Clearly, both the Department of Correctional Services and the Department of Social Development would need to collaborate in the supervision of such a scheme.

7. Conclusion

Prison is a harsh environment, and it can be reasonably assumed that most children will be removed from their mothers before their mothers' sentences have been served. It will be a particularly painful separation and one which is beyond the understanding of the child. On the one hand, prison is defined in terms of separation; but on the other, given that 74% of female offenders are first time offenders, the scope for meaningful and creative interventions is wide.^{xvii} Parenting programmes; household skills training; opportunities for further education while serving time; and greater access to employment opportunities after release from prison, would do much for family coherence and reconstruction.

It is possible to chart a way forward for mothers, their babies and young children which is not characterized by the pain of separation. A restorative justice approach can lead to reintegration into the family, community and society that is based on dignity, hope and respect. As Minister Ndebele points out, "we must transform these institutions from being sites of retribution, derision and humiliation to institutions of new beginnings and rehabilitation, and provide a second chance for those who have wronged society".^{xviii}

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ⁱ Irving Goffman, *Asylums*, Harmondsworth: Penguin, 1961.

ⁱⁱ Iolnews, 8th March 2014; Department of Correctional Services Annual Report 2012-2013.

ⁱⁱⁱ *Hard Times: Women's Pathways to Crime and Incarceration*, Lillian Artz, Yonina Hoffman-Wanderer & Kelley Moul, 2012.

^{iv} Given the high level of domestic violence in South Africa, some of these murders may have been in self-defence; it is very difficult to have an accurate details of such murders.

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- v Babies born in prison do not have that fact noted on their birth registration certificate.
- vi The African Charter is the only region-specific Child Rights Instrument. It builds on the UN Convention on the Rights of the Child and highlights issues that are seen as of special importance in the African context.
- vii The Howard League for Penal Reform Report, 2007.
- viii *The Price They Pay: Protecting the Mother-Child Relationship Through the Use of Prison Nurseries and Residential Parenting Programs*, Anne Jbara in *Indiana Law Journal*, Issue 4, Vol 87, 2012.
- ix Iolnews 8th March 2014.
- x *Sowetan*, 12th April 2012.
- xi *Mail and Guardian*, 12th April 2012.
- xii See 6 above.
- xiii SAPA 28th July 2013.
- xiv *Women and Prisons in South Africa*, Julia Sloth-Nielsen, CSPRI Newsletter, No 9 February 2005.
- xv See 6 above.
- xvi Sibusiso Ndebele: Address by the Correctional Services Minister at the African Correctional Services Association Ministerial Consultative Forum, 03/04/2014.
- xvii See 3 above.
- xviii See 10 above.

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