

# Invisible no more



## Children of Incarcerated Parents in Latin American and the Caribbean

Case study from:  
Brazil, Dominican Republic, Nicaragua & Uruguay



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An extended version of this report is available in Spanish

English edition translated and written by Aaron Tate

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# Prologue

This publication is undoubtedly a significant contribution to the development of awareness and new initiatives regarding children with incarcerated parents. In response to increased violence in most of the countries of Latin America and the Caribbean, states have increasingly implemented repressive measures which have drastically increased the number of people in prison throughout the region. In this context, it is an urgent challenge for governments, civil society, communities and families to understand the impact that this is having on the life and rights of children of incarcerated parents. The UN Committee on the Rights of the Child, during its 2011 Day of General Discussion, highlighted the fact that there is a “low general level of knowledge regarding children of incarcerated parents”<sup>1</sup>

I therefore commend Gurises Unidos and CWS for having assumed the important challenge of raising awareness of this reality, as there is an urgent need to join forces in the region to understand this problem and make it a priority in the agendas of the public sector and civil society. To this effect, this publication generates qualitative information about the lives of children of incarcerated parents, and it documents how incarceration impacts their opportunities to develop and enjoy their rights.

This study confirms how the rights of these children are neglected when their parents are incarcerated, and how this worsens the situation of social exclusion in which most of them live. Families in this situation face increased financial strains which force many children to assume different roles in order to fulfill the family needs. As a result, these children miss out on the health, educational and social related activities that are essential to their development. The testimonies of relatives, caretakers and children included in the study clearly show the stigmatization that all of them face, and how this stigmatization affects their dignity and self esteem.

One finding of this study that should not be overlooked, and that explains why this issue remains invisible, is the lack of coordination between the different parts of the child protection and the justice systems. This leads to an adult-centric approach to these situations, and this affects the lives of the children.

This study can also play a fundamental role in exposing how little information exists about children of incarcerated parents and their right to live a life free of violence. Both from the qualitative and quantitative stand point, this information is a fundamental input for those in charge of creating appropriate programs and initiatives to guarantee the rights of these children, as well as to identify the responsible state authorities.

In addition to shedding light on the lives of these children, the study also provides some recommendations in order to assist in the process of guaranteeing their rights following the Convention on the Rights of Children, and about how to improve the coordination and interaction between state actors. This represents an enormous challenge, but it also generates a great motivation to continue working.

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1 UNCR, Outline Day of General Discussion “Children of Incarcerated Parents” 2011, #8.

Even though each of the recommendations is substantial on its own, we want to highlight the need to develop plans in order to include this issue as part of the public agenda, to create programs and policies to decrease the level of exclusion and stigmatization of this population, to train workers and officials specifically around this issue and to invest resources to achieve all of this.

Civil society and community-based organizations are usually closer to the families, and therefore they carry some responsibility for elaborating, implementing and evaluating programs and initiatives specially geared towards empowering this population.

By making known this nearly invisible reality and the lack of appropriate government response to it, this study can be an important impetus for the creation of proposals, programs, plans and policies that guarantee the rights of children and their incarcerated parents in a holistic and coordinated manner.

Rosa María Ortiz  
Commissioner  
Inter American Commission on Human Rights

# Executive Summary

Over the past two decades, the number of people incarcerated in Latin America has skyrocketed, with more than 1.2 million prisoners overcrowding correctional facilities across the region. Accompanying this, we estimate that the number of children with an incarcerated parent in the region is currently around 1,5 to 1,9 million (see Appendix A for more details).

This marginalized and vulnerable group of young people has been neglected by, and remained virtually “invisible” to public policies, programs and civil society.

In order to assess the situation and needs of these children, and following the recommendations made by the UN Committee on the Rights of the Child during its Day of General Debate in 2011, CWS, with the technical leadership of Uruguayan NGO Gurises partnered with organizations in Brazil, Dominican Republic and Nicaragua to conduct the first regional study of children with incarcerated parents.

The participating organizations surveyed 193 children with an incarcerated parent (or adult referent), and 50 of these children and 46 of their caregivers or guardians were interviewed. 23 government officials and regional experts working in child protection were also surveyed. The results of this study demonstrate the profound impact that the incarceration of a parent has on the life of a child. Families face increased financial strains which force many children to work outside the home or assume adult roles in their household. Children undergo emotional changes, becoming sad, withdrawn or sick, and they face social stigmatization and discrimination in their communities. Their experience with police and the justice system typically creates a negative perception of these authorities, and these elements combine to alter the development of childrens’ self-identity, leading some to develop identities based on resistance to existing social structures. Research confirms that maintaining the child-parent relationship during the incarceration is one of the best ways to help children cope with such difficulties. However, it is difficult for families to maintain such relationships when their only face-to-face interaction is through prison visits, where children must endure unhealthy prison conditions, invasive body searches, and mistreatment from prison guards.

Government officials and experts working in the area acknowledge the vulnerability of this group of children, and provide important insight into their situation. They describe the justice and penal systems as “adult-centric,” looking at matters only from the perspective of the adults involved. In fact, no country in the region even systematically documents or registers the number of children of prisoners. Without any idea of the scope of the problem, it is nearly impossible to create policies and programs to address it. Likewise, the judicial system does not account for the best interests of related children when it decides appropriate punishment for those convicted of crimes.

While the legal rights and responsibilities of fathers and mothers are identical, some experts prioritize the issue of incarcerated mothers, particularly those whose children live with them in prison. It appears that the incarceration of a mother has a more dramatic

impact on family dynamics and significantly increases vulnerability of children. Whether it is the mother or father that is convicted of a crime, the use of alternative punishments (eg. open and semi-open prisons) would lessen the negative impact on children. Likewise, improved coordination between state actors involved in the justice system and child protection would improve services and support to children of incarcerated parents.

It is clear that governments are the main responsible of protecting the rights of all children, and that they should, in coordination with civil society, begin to develop policies, programs and initiatives that support and empower children of incarcerated parents.

# Introduction

Since 2005, CWS has partnered with leading children's rights organizations in Brazil, the Dominican Republic, Nicaragua and Uruguay<sup>2</sup> to defend the rights of vulnerable children in the region and provide holistic services in marginalized communities. Through this work, the four organizations became increasingly aware of a unique and overlooked group: children of incarcerated parents.

In addition, in 2011, the Day of General Discussion of the Committee on the Rights of the Child was dedicated to the issue of children of incarcerated parents, and it became evident that there was a lack of both quantitative and qualitative information and data about these vulnerable children.

In response to this, the organizations came together to carry out the first regional study on the subject, under the technical leadership of Gurises Unidos (Uruguay) and CWS. The primary objective of the study was to create an initial approximation of the situation faced by children with incarcerated parents, and to generate information that can be used for the development of related public policies

Specific objectives were to develop a demographic profile of the affected children, identify how they are affected by the incarceration, review relevant public data, identify applicable policies and programs, contribute to awareness of the issue, and make recommendations to government and civil society regarding children of incarcerated parents.

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<sup>2</sup> The organizations involved were Projeto Meninos e Meninas de Rua (Brazil), Proyecto Educativo Caminante (Dominican Republic), INPRHU (Nicaragua) and Gurises Unidos (Uruguay).

# Approach and Methodology

The process of the study started by reviewing available documents, reports, and studies regarding children of incarcerated parents, most of which originated in the United States, Europe or the United Nations.<sup>3</sup> We also investigated what data and information were available and what laws, policies and programs existed in the region. This was enhanced by interviews with public officials and civil society experts.

Staff from the four participating organizations collected information and conducted surveys in communities in which they were already working. They conducted individual interviews, in a respectful and comfortable environment, with children of incarcerated parents, as well as with their caregivers. The words of the children and caregivers were documented and submitted to the lead researchers, who identified the seven themes that form the heart of the report in the section “Voices of the Children.”

We utilized a child-centered approach, believing that the best way to learn about the realities and needs of children is to *talk to* children rather than just talking *about* them. We also have a rights-based approach, and we hold up the Convention on the Rights of the Child as the international standard which unifies the diverse communities in the region. We value the public sector and governments as the entities that have the primary responsibility to protect the rights of children, and we understand the unique ability of civil society and grassroots organizations to identify problems in communities and vulnerable social groups.

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<sup>3</sup> Noteworthy examples are OsbourneNY, Urban Institute, Action for Prisoners (UK).

# Regional Context: Children’s Rights in Latin America and the Caribbean

It has been more than twenty years since the Convention on the Rights of the Child was ratified throughout Latin America and the Caribbean. Despite advances since then, children in the region continue to grow up in societies marked by inequality, persistent poverty, malnutrition, illness, preventable death, and problems in access to healthcare and education. At the same time, recent decades have seen a dramatic increase in the number of people incarcerated in the region, in large part due to the so-called “war on drugs.”

The majority of incarcerated people leave behind children, who are “the invisible victims of crime and the penal system,” their childhood forever changed by both “their parent’s crime and the state’s response to it in the name of justice.”<sup>4</sup> These children have distinct vulnerabilities, needs, and issues. Yet they have been essentially ignored by both governments and civil society in the region, including those institutions that focus on children’s rights. While studies and programs related to children of incarcerated parents have developed in some regions, and the issue is discussed on a global level, there have not been any prior studies of this nature in the region.

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<sup>4</sup> Scotland’s Commissioner for Children and Young People (2008), *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*

# The Number of Children with Incarcerated Parents

Based on information gathered from different sources it is estimated that there are between 1.5 and 1.9 million children in the region that have a parent in prison, with the largest numbers being in Brazil, Mexico and Colombia (see Appendix A for exact figures). Of these, there are more fathers in prison (92% of the total) than mothers (8%), and there is a small percentage of children with both parents in prison.

Countries in the region do not collect data on the number of children of incarcerated people. This makes it impossible for governments and the community at large to understand the scope of the problem on a local, national, and regional level.

# State of the Prison Systems

Throughout the region, prisons are dealing with overpopulation and inadequate infrastructure. In the four countries where the study took place, the percentage of the adult population that was incarcerated doubled in the last twenty years.<sup>5</sup> While some countries (most notably the Dominican Republic) have experimented with alternative punishment methods, in the vast majority of cases, justice systems throughout the region are increasingly utilizing long-term incarceration, an approach which generally has strong community support.

Brazil is the only country where we found national public policies and programs addressing the needs of children with incarcerated parents. If a parent was part of the formal workforce prior to incarceration, the government provides the remaining family with monthly financial assistance of about \$364 USD.

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<sup>5</sup> In 1992, the average rate of incarceration was 98 per 100,000 people. In 2011, it was 216.

# Profile of Surveyed Children

Researchers surveyed 193 children from 58 different household units in four countries. All of the surveyed households were located in marginalized and low-income neighborhoods which were served by the four organizations that conducted the research.

## Gender and Age of Children Surveyed

Country	Household Units	Females			Males			Total
		Age		Total	Age		Total	
		0-12	13-17		0-12	13-17		
Dom. Rep.	13	12	8	20	15	7	22	42
Brazil	8	18	1	19	13	6	19	38
Nicaragua	29	26	8	34	31	14	45	79
Uruguay	12	12	6	18	14	4	18	36
Total	58	66	23	89	73	31	104	193

Regarding living conditions, most households reported having electricity (98%) and access to potable water (95%), while only 74% had a sanitation system in the home. Homes were typically overcrowded; 71% of families had three or more persons per bedroom, and many children shared beds with other family members. All of the children surveyed had access to healthcare, with 94% being covered by public health services.

Access to a quality education was more problematic. One in ten (9.6%) children over age six had never attended school. Even more significant was the fact that nearly half (47%) of the children were falling behind in school by three years or more.

# Voices of the Children: The Impact of Incarceration

Seven themes emerged from our interviews with children of incarcerated parents and their caregivers highlighting how incarceration affects the development of children.

## ECONOMIC IMPACT AND THE EARLY ASSUMPTION OF ADULT ROLES

The incarceration of a parent makes it more difficult for the remaining caregivers to provide children with such basic necessities as food, shelter, and education. This causes radical changes in family roles and responsibilities. Families report that children must assume adult roles at an early age, and must take on increased responsibility in the home while the remaining caregiver works additional hours or jobs. This results in children having less time than their peers for education and play.

*“We’ve changed how we do things around the house. My mom said, ‘You are in charge of the kitchen every day, and your sister is in charge of the clothes.’”  
(Teenage girl, Uruguay)*

In order to compensate for the lost income of the incarcerated parent, many children start working outside the home, while those who were already working typically work longer hours. This occurs even in situations where the incarcerated parent was not living with the family but was providing financial support to the family.

*“My daughter was studying at the university, but she dropped out of school and left everything when my husband was put in prison.” (Mother, Nicaragua)*

This situation is exacerbated by the lack of public programs to support these children and families. In the four surveyed countries, only Brazil provides special economic support to children with incarcerated parents, and this program only applies if the incarcerated parent was a part of the formal workforce. As a result, less than 10% of children with incarcerated parents receive this benefit.<sup>6</sup>

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<sup>6</sup> 38,618 families benefit from this program, according to the Ministério da Previdência Social (January 2013). We estimate that there are over 400,000 Brazilian families with an incarcerated parent. The average payment is \$364 USD.

## EMOTIONAL AND PSYCHOLOGICAL IMPACT ON THE CHILD

Daily face-to-face interactions with family members are the foundation for the social development of children. Therefore, the incarceration of a parent has a strong impact on the socialization, emotional development and self-confidence of a child. The United States Center for Disease Control and Prevention has identified the incarceration of a parent as one of ten “adverse childhood experiences” that constitutes “a major risk factor for the leading causes of illness and death as well as a poor quality of life.”<sup>7</sup>

In our research, families reported notable changes to the mental and physical health of children following the incarceration of a parent. Above all, caregivers report the onset of sadness, grief, and crying, as well as children withdrawing and becoming more distant. Children also suffer from psychosomatic illnesses such as fever and fainting. Others experience a regression such as resumption of childhood incontinence, insomnia and nightmares, and some children lose interest in eating, playing or going to school.

*“They changed a lot, everyone is so sad. We used to all live together as a family, and now [the incarcerated parent] is gone and the house is just so sad. It’s affected me a lot because now my grandmother has to work a lot just to survive and I feel bad about that. I’ve just cried so much about it.” (Teenage girl, Nicaragua)*

The emotional impact of the incarceration of a parent can vary based on multiple factors, primarily the quality of the child’s relationship with the parent prior to incarceration. At the same time, other factors are important to highlight, as public policies and programs can address these issues, in order to increase the capacity of children to cope with the incarceration. These factors are:

- The manner in which a child receives information about the parent’s incarceration and the reasons for the incarceration;
- The degree to which the child has opportunities for quality direct contact with the incarcerated parent; and
- Whether the basic needs of the child are guaranteed while the parent is incarcerated.

## CHANGING PARENTAL ROLES AND RESPONSIBILITIES

Parents have a legal right and responsibility to care for their children, and this is not revoked when they become incarcerated. At the same time, many prisons do not ensure the basic means by which an incarcerated parent may exercise these rights, such as functioning telephones and appropriate opportunities for family visits. Many of the mothers interviewed said that incarcerated fathers continued to parent their children while in prison, and this provided stability for the children and reinforced the authority of the mother, particularly regarding discipline issues.

*“[My husband] was the one who always set the limits in our house. So, the other day I spoke to him and I said, ‘Tell Juan to settle down and get his act together, I think he is getting into something and it’s getting really difficult for*

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<sup>7</sup> Adverse Childhood Experiences Study, United States Center for Disease Control and Prevention, January 2013, <http://www.cdc.gov/ace/about.htm>

*me to handle him.' And then he spoke to him by telephone and that was when Juan calmed down a little bit." (Mother, Uruguay)*

At the same time, some mothers distance themselves from the incarcerated father, and feel that he has lost his right to parent as a result of being in prison. In any case, the remaining parents or caregivers must assume additional responsibility, and may experience life changes of their own while their partner (or ex-partner) is incarcerated. When parents find new relationships or spouses, this marks another change in parenting roles, decision-making and authority in the family.

*"Now I am the one who has to look after my kids. After everything that happened, I can't even consider him when I'm making decisions about the lives of my children. I am their mother and father." (Mother, Nicaragua)*

When mothers are incarcerated, however, they almost always remain very involved in major decisions affecting the lives of their children, and children are normally cared for by their maternal grandparents. Nevertheless, incarcerated mothers can face additional challenges to maintaining their authority and exercising their rights and responsibilities as a parent. In addition to greater stigmatization of families in which the incarcerated mother is seen to have "abandoned" her children, caregiving grandparents often find it difficult to take children to prison visits due to the lengthy travel, harsh visiting conditions, and long hours standing in line. For this reason, despite the fact that maternal relationships are usually stronger prior to incarceration, mothers are visited in prison less often than fathers in prison.

## FORMATION OF IDENTITY AND COMMUNITIES OF RESISTANCE

In the countries included in this study, the prosecution of criminal activity is concentrated in certain geographic areas, where crime and other non-legal activities are common. In some communities, such illegal activity may be necessary for families in poverty to ensure the basic needs that the state is unable or unwilling to provide. This could include altering power lines to steal electricity for home use, paying bribes to ensure police protection, or forging paperwork to enroll children in school.

As a result, the children that participated in the survey are growing up surrounded by varying degrees of illegal activity, and a significant number of their neighbors and social circle in prison. One child reported five close family members in jail, including her father, two uncles, one aunt and a grandmother.

*"Right now, my brother-in-law is in jail. My father too, it's his first time. But my brother, he was in jail two or three times, I don't remember. And a long time ago, my uncle was there. He died in prison." (Teenage girl, Uruguay)*

It was observed that in communities where families must resort to illegal activities to survive and where police monitoring and judicial persecution are heavy-handed, members of the community develop identities of resistance. In these cases, communities value and defend illegal activities and honor those persecuted for crimes.

*"Shame, shame, it makes me so ashamed [what he did to get sent to prison]. But my son, he is proud of it." (Mother, Nicaragua)*

Families report that this is an extremely complex environment in which to teach right from wrong and acceptable “normal” behavior to children, especially those with a loved one who has been convicted of breaking the law.

*“His teacher advised me that we should go and visit [his father in prison], but I didn’t take her advice because I don’t want my grandson to get used to it and see this as something normal.” (Grandmother, Dominican Republic)*

## SOCIAL STIGMATIZATION AND DISCRIMINATION

In all the interviews conducted, families spoke of feeling disgraced, and being ridiculed and insulted because they had a family member in prison. This exemplifies the intense social stigma faced by children with incarcerated parents, whereby these innocent victims are publicly punished for the crimes of their parents.

The stigma itself, as well as the fear of stigmatization, affects the daily lives of children and results in a very real discrimination against them. Families protect themselves from this by hiding the fact of the incarceration, and not speaking of it outside of the family household.

*“We don’t want anyone to realize the problems we’re having because most people only want to know so they can make fun of you.” (Aunt, Dominican Republic)*

At the same time, some families recognize that this stigma is a form of discrimination, and they speak out and defend themselves. This may be accompanied by an identity of resistance whereby the social stigma of having an incarcerated family member becomes a sort of “badge of honor.”

*“No one is proud about it but I do not comment this often. We are discriminated against, you know?” (Brazilian Grandmother)*

## PERCEPTION OF POLICE AND THE JUSTICE SYSTEM

The perception that children of incarcerated parents have of police and the justice system is typically developed in the context of their parent’s conflict with the law. The event of the arrest of a parent is particularly problematic, and children who were present at the arrest report feelings of sadness, distress, tension and powerlessness. Families express concern that often police use excessive violence and do not follow their own policies and standards during the arrest. On the other hand, some police officers do show respect and care for children who are present during the arrest, and this can ameliorate some of the stress associated with the event.

Once the parent is in prison, children continue to develop their perception of the judicial system through their interactions with prison guards during visits. The children surveyed expressed a very low opinion of prison guards, due to the mistreatment of prisoners, disrespect toward visiting families, and intrusive searches.

*“They hit you, they hit the prisoners with a big tube, and we don’t like that they do that. I don’t like it when they search me and my family, and when they make us take off our clothes.” (Girl, Nicaragua)*

## THE IMPORTANCE AND DIFFICULTIES OF VISITING INCARCERATED PARENTS

All the difficult realities and complex issues faced by children of incarcerated parents manifest themselves in visits to parents in prison. It is there that the child-parent relationship plays out, and where the diverse emotions children feel about their parents are concentrated and exposed. Children and their family members had a lot to say about prison visits, and their comments are revealing both at face value, and as indicators of underlying issues.

In the vast majority of cases, visits between children and their incarcerated parents are important in helping children adjust to the incarceration, maintaining the child-parent relationship, and lessening the negative effects of the incarceration on children. The children placed great value on visits to their parents, and talked freely about their time with their parents.

*"I like to talk to him, he picks me up and everything, he shows me to all his friends that he has there. They wanted to kill him, but since he has a friend there, they didn't kill him. I feel sad and I want to get him out of there because of that." (Boy, Nicaragua)*

Perhaps the best illustration of the importance of the visits is the way children speak of the sorrow and sadness they feel when the visits end. They are sad to say goodbye to a loved one and also to leave the parent inside the prison.

*"I say hi to him, he says to me that it's terrible that I haven't visited, he says to me 'you know I didn't want it to be this way,' he says 'take care of yourself' and then they do the ringggg [bell] and that's when I start to cry." (Boy, Nicaragua)*

For caregivers, the visits can also be emotionally difficult and exemplify the complicated choices they face in raising these children. Most caregivers want the children to maintain their relationship with the incarcerated parent, but they also want to protect the children from additional harm, shame and stigma. They are usually worried that the children will follow the path of the incarcerated parent, and so some caregivers do not take children to prison visits for fear that they will "learn bad behaviors."

*"There are people there in prison who have changed their ways, but there are others that are going to get out and do the same thing or worse. I saw that place was a bad place for my nephew who was growing up, and so I stopped going as much." (Aunt, Dominican)*

More often, caregivers do take children for visits, but it is not an easy or pleasant experience. Children and caregivers speak extensively about unhealthy prison facilities, long waits in uncomfortable conditions, invasive body searches (of adults and children), and mistreatment from prison guards and staff. Families typically travel a long distance, at considerable cost, to visit prisons, and limits on visitation hours sometimes require children to miss school. The cost of a visit is often increased by the expectation that visiting family members bring food and hygiene items to the incarcerated family member.

Certain prison administrative practices make matters worse. Some families arrive to prison visits only to find out that their incarcerated loved one has been transferred to another facility or has lost visitation privileges as a form of punishment. In other cases, chil-

dren have been denied visits to their parents because they lack documentation establishing the parental relationship, such as a birth certificate.

*“My son gets really bad, really sad, every time he goes to see his father. He can’t even eat, he’s so upset by seeing his father in that place. The poor kid, he even makes up that he sees holes in the prison walls where his father can escape.”  
(Mother, Nicaragua)*

# The Perspective of Public Officials and Experts

23 child protection and judicial experts from four countries were interviewed, including 13 government officials and 10 civil society experts representing the judicial system, parliament, the prison system, children's protection ministries, and academia. Their perspective is critical, since the problems and risks facing children with incarcerated parents are so great that they can only be addressed through the development and improvement of government policies, programs, and systems.

## **“ADULT-CENTRIC” JUSTICE AND PENAL SYSTEMS AND THE HIDDEN NATURE OF THE PROBLEM**

Interviews revealed the underlying “adult-centric” nature of the justice and penal system, which does not take into account children of prisoners or their rights. This is exemplified by the fact that there are no comprehensive registries of children with incarcerated parents in the region, and the penal system typically only knows that a prisoner has children when they come to visit. The criminal justice system does not take into account the best interests of related children when determining punishments for parents, and there are almost no public policies or programs that address the particular needs of children of incarcerated parents.

On the rare occasion that a child of incarcerated parents does receive support or professional attention, it is typically only after the child has “become a problem” due to misbehavior, violence or difficulties at school. As such, this attention is initiated at the request of an adult, and may simply have the goal of controlling the child rather than addressing underlying issues. Such services are often provided by understaffed agencies; in one case, a team of one social worker and one psychologist were expected to serve 300 at-risk children. This problem is compounded by the fact that often the caregivers of children do not fully understand the negative impact that the parents’ incarceration can have on children, and caregivers are usually preoccupied with everyday survival in the midst of great family changes.

For these reasons, the protection of the rights of children with incarcerated parents has been largely ignored by the public sector, and has not been broadly demanded by family members, and so the issue remains virtually unknown and ignored by decision-makers and society at large.

## **CHILDREN LIVING IN PRISON**

Penal system administrators seem to give little thought to the rights of children of incarcerated parents, except when speaking of children who live in prison with their parent. In the four countries included in this study, laws permit young children to live with their mother

up to a certain age while she is incarcerated. The United Nations Bangkok Rules,<sup>8</sup> a protocol which is widely known among experts in Latin America, promotes the protection of the mother-child relationship and the best interests of children living with their mothers in prison.

Children living in prison present a challenging situation, where the rights of children to live with their parents is in conflict with the reality that children cannot fully enjoy their rights while growing up behind bars. Various stakeholders told us that better options exist, such as using more alternative punishment systems.

*“The most important [option] is using a variety of alternatives [open and semi-open prisons] which would ensure that the family relationships are not lost or interrupted.” (Parliamentary Commissioner for the Penal System, Uruguay)*

## DISTINCTION BETWEEN MOTHERS AND FATHERS IN PRISON

The experts interviewed point out that while they still represent less than 10% of the incarcerated population, the number of women in prison has been increasing in recent years, leading to additional concerns about the children they leave behind. Even more complicated is the situation of an increasing number of foreigners incarcerated, often for drug trafficking, in countries far from their children and families.

Stakeholders tend to prioritize children with incarcerated mothers over those with incarcerated fathers, based on the traditional role mothers play as primary caregivers. In fact, in some circumstances, fathers in prison may be uninterested in maintaining relationships with their children, and there may be a lack of legal paternity established between the father and child. For these reasons, some of those we interviewed suggested that it is a priority to focus attention and programs on situations where mothers are incarcerated.

*“Here in Latin America, women are very important. If a man isn’t in the house, no one feels it, but if the woman isn’t there, everything falls apart. For this reason, we are fighting for women to be able to complete their punishment in their homes, because the majority of women who leave the house never return. Right now, there are more [returning], but before it was almost none, less than 1%” (Director of Prison Solidarity, Nicaragua)*

## POLICIES AND PRACTICES OF PRISON VISITS

Those interviewed, including government and prison officials, recognize the importance of prison visits in order to maintain the relationship between children and their incarcerated parent. However, there appears to be a significant gap between the formal policies and procedures that seek to ensure appropriate and respectful prison visits and the reality of how visits are handled by prison staff. In some cases, local prison administrators have significant discretion in how they implement such policies, and because of this, improvements and utilization of “best practices” may be short-lived.

At the same time, the stakeholders consulted repeated many of the concerns expressed by children and families about the difficult and inhumane conditions present at prison visits, and how these are not conducive to protecting the rights and dignity of children.

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8 2010/16 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) <https://www.un.org/en/ecocsoc/docs/2010/res%202010-16.pdf>

*“The visits are highly destructive and victimizing, especially for children and youth. I can’t imagine the kind of shame and indignity it is for those children, and how devastating it must be for them to go through this experience weekend after weekend.” (Government Official, Uruguay)*

## **INCREASED USE OF INCARCERATION AND LACK OF INTER-INSTITUTIONAL COORDINATION**

Prison terms are increasingly becoming the preferred method of punishment, even for small criminal offenses, and this punitive approach has broad support from various sectors of society. This presents a challenge for those advocating for alternative punishments--such as open and semi-open prisons, probation, parole, and work release--which would better protect the parent-child relationship.

Many of those interviewed highlighted the lack of internal coordination between the sectors of the judicial system that issue punishments and those sectors that focus on family and child issues. The punitive process does not factor in the best interest of children as required by the Convention of the Rights of the Children and other national laws that serve to protect the rights of children. There are simply not mechanisms in place to assure the wellbeing of children in these situations.

It is not an easy situation to resolve. Judges in criminal courts are typically responsible for determining the culpability of the accused and for issuing punishment based on the established penal code. In most cases, the situation of the family of the accused is not taken into consideration in these decisions, often due to the concept of ensuring equal justice through an independent (and “blind”) justice system.

*“The independence [of the judicial system] is fundamental, and a justice system that is not independent destroys the foundation of the rights of the state. But the problem is that independence is not well understood when it leads people to look at things too narrowly, or too fragmented, to the point of creating contradictions.” (Parliamentary Commissioner for the Penal System, Uruguay)*

## **ISSUES INHIBITING THE DEVELOPMENT OF RELEVANT POLICIES AND PROGRAMS**

The successful implementation of policies and programs is limited, above all else, by the lack of quantitative and qualitative information about children of incarcerated parents. They are also limited by the daily challenges faced by prison system officials in providing the basic needs and ensuring security in a difficult and often violent environment. In addition, there are not systems and institutions in place to address the needs of children of incarcerated parents. The creation of these systems is impaired by insufficient diagnostic information on such children, the weak implementation of the few programs that do exist, the lack of training and specialization on the issue, and the challenge of coordination between different sectors of government and civil society.

The majority of stakeholders observed fragmented policies affecting children of incarcerated parents, and suggested better inter-institutional coordination to harmonize policies and practices that protect the rights of children.

# Recommendations

To protect and promote the rights of children with incarcerated parents, and based on the findings of the study, the following actions, measures and policies are recommended:

## RESEARCH

- Conduct additional targeted research in order to gain more information about the lives of children of incarcerated parents in the region

## AWARENESS-RAISING AND TRAINING

- Inform and train government officials and civil society leaders regarding the vulnerability of children of incarcerated parents, in order to build the foundation for the development of policies, programs and procedures that support children in this situation
- Produce educational materials regarding the experience of children of incarcerated parents, and distribute them to affected children, their caregivers, prison system officials, educational institutions, and the community at large
- Ensure that children have access to age-appropriate information about their parents' incarceration

## PENAL SYSTEM POLICIES AND PROCEDURES

- Create a registry of children of incarcerated parents. Register children upon the incarceration of their parent, and use this registry ensure they receive proper guardianship and access to appropriate social services
- Allow arrested and convicted parents to arrange guardianship of their children prior to their detention or prison term
- Provide orientation to incarcerated parents, through qualified professionals, regarding their rights and responsibilities, as well as resources available to ensure the care of their children
- Guarantee the right of children to maintain contact with their incarcerated parent by establishing and maintaining effective communication systems (telephone contact, correspondence, etc.)
- Establish prison visitation policies and procedures to create an appropriate environment for children to visit their incarcerated parents. Such policies should include:
  - Measures to avoid long waits at entry points
  - Creation of “child-friendly” spaces where children can meet with their incarcerated parent

- Security screenings that are appropriate and respect the rights and dignity of children
- Conditions that guarantee physical contact and privacy during child-parent visits

## COMMUNITY AND CIVIL SOCIETY

- Provide venues for children of incarcerated parents to express their opinions and to be heard by decision-makers regarding issues that affect their lives
- Ensure the full integration of children of incarcerated parents in the education system, health care system, and social and recreational spaces in their communities. Community-based and civil society organizations can play a vital role by providing psychological services, peer support groups, and social and educational services.
- Design all programs for vulnerable children to appropriately accommodate children of incarcerated parents
- Work through civil society and grassroots organizations to combat stigmatism in communities, and to empower children of incarcerated parents to enjoy their rights

## PUBLIC POLICIES AND COORDINATION

- Invest the financial resources necessary to establish a set of unified child protection policies that protect the full rights of children in accordance with the existing protection frameworks in each country
- Dedicate the financial and human resources necessary to create programs that reduce the risks of social exclusion and stigmatization, and promote positive socialization for children of incarcerated parents
- Implement policies and mechanisms of coordination between the social and judicial systems to promote the best interests of children and prevent violations of their rights when their parents are arrested and/or sentenced to prison
- Provide material and economic support to vulnerable children with incarcerated parents in cases where children would not otherwise have access to services and basic needs
- Ensure that families and caregivers of children with incarcerated parents receive necessary support to minimize the negative impact of the incarceration on children and their family relations

# Appendix A

## CHILDREN WITH INCARCERATED PARENTS IN LATIN AMERICA AND THE CARIBBEAN

Incarcerated persons <sup>1</sup>				Lower Range (Based on info from Uruguay)	Upper Range (Based on info from Mexico and Guatemala)
Country	Men	Women	Total		
Argentina	55.987	2.823	58.810	67.081	83.877
Belice*	1.520	42	1.562	1.768	2.224
Bolivia	12.602	1.670	14.272	16.703	20.483
Brasil	479.499	32.786	512.285	587.857	731.707
Chile	49.314	4.288	53.602	61.878	76.672
Colombia	106.027	8.845	114.872	132.460	164.268
Costa Rica	12.130	927	13.057	15.022	18.661
Cuba*	53.633	3.704	57.337	65.810	81.900
Ecuador	19.221	1.901	21.122	24.474	30.240
El Salvador	24.344	2.675	27.019	31.411	38.715
Guatemala <sup>*a</sup>	14.356	1.436	15.792	18.305	22.611
Haití*	9.459	477	9.936	11.333	14.171
Honduras	11.864	443	12.307	13.974	17.534
México	230.859	11.895	242.754	276.999	346.257
Nicaragua	8.420	693	9.113	10.504	13.030
Panamá	12.732	988	13.720	15.791	19.611
Paraguay	6.767	394	7.161	8.190	10.220
Perú	57.522	3.868	61.390	70.420	87.677
República Dominicana	21.102	586	21.688	24.542	30.873
Uruguay	8.206	861	9.067	10.525	12.987
Venezuela	17.885	1.162	19.047	21.832	27.198
Puerto Rico*	11.097	355	11.452	12.979	16.308
Guayana Francesa*	663	31	694	791	990
Total			1.308.059	1.500.651	1.868.214

1 – ILANUD, Carranza, E., 2012

We calculated the “Lower Range” figures using data from Servicio de Paz y Justicia del Uruguay (SERPAJ) 2010. The “Upper Range” was calculated using data from CIDE (Perfiles de la Población Penitenciaria I: Frecuencias y Descriptivos, Vilalta/Fondevila – CIDE, 2012) and a study from Guatemala (“Informe de monitoreo de las problemáticas que enfrentan las mujeres privadas de libertad y sus hijas e hijos en Guatemala según las reglas de Bangkok” Colectivo Artesana, 2013)

<sup>\*a</sup> Info from this latter source as well.

Missing info from countries (\*) and percentage of women incarcerated per country from <http://www.prisonstudies.org/>