



GUIDELINES TO PROMOTE AND COMPREHENSIVELY
PROTECT CHILDREN AND ADOLESCENTS WHOSE
PRIMARY CARERS ARE INCARCERATED
TECHNICAL GUIDANCE

CREDITS



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Note on the use of inclusive and gender-sensitive language and certain terms, expressions or phrases that are used interchangeably in this paper:

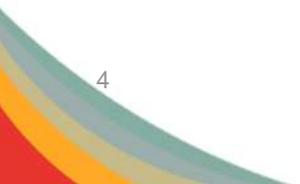
- Children and Adolescents to refer to the sons and daughters of incarcerated persons.
- Fathers/Mothers/parents/significant adults/responsible adults/caregivers or carers to refer to persons deprived of liberty who are responsible for the personal care of children and adolescents.
- Carers/caregivers/responsible persons to refer to the persons who care for children and adolescents permanently or definitively, during the deprivation of liberty of their parent/s; or during the separation measure adopted by the competent authorities.
- Centre/Prison/Detention Facility to refer to any place of imprisonment for criminal offences.

In some cases, for the sake of brevity or to avoid repetition, we have used the word "child" as used in the Convention on the Rights of the Child, making it clear that this includes male and female children and adolescents; "parents" to include father and mother, and "caregivers or carers" to include male and female persons.

¹ The work of the Platform's technical team, as well as the printing of the first edition and the translation of this paper were carried out thanks to the support of Church World Service.

CONTENT

I. Presentation	5
II. Putting the Issue into Context	6
III. Regulatory Framework	7
IV. The Best Interest as a Primary Consideration	8
V. Conclusions	8
VI. Recommendations to the States	9



I. Presentation

1. On 30 September 2011, the United Nations Committee on the Rights of the Child², on its “Day of General Discussion”, underscored the need to raise awareness about and explore issues related to the human rights of “children of incarcerated parents”, with the aim of providing policy and practical guidance to States and other relevant actors on the respect, promotion and fulfilment of the rights of children, both those who live with or visit their parents who are in prison because of a criminal offence, and those who are left outside when their parents are serving a penalty involving the restriction of their freedom.

2. At the same time, the General Assembly of the OAS, through its Declaration on “Violence against and Exploitation of Children” (AG/DEC. 76 [XLIV-O/14]), has urged States to have clear and measurable targets and indicators to ensure that children are free from violence and exploitation, including statistics on those who do not receive adequate care or are at risk of inadequate care. This declaration strengthens the IIN’s mandate to develop mechanisms and tools in order to support the States in establishing efficient and comprehensive actions and strategies to promote and protect the rights of children and adolescents.

3. In this respect, the Inter-American Children’s Institute, a specialized organization of the Organization of American States (IIN-OAS) and the bodies that compose the Regional Platform for the defence of the rights of children whose adult carers are deprived of liberty (NNAPes) have worked together to draft a paper that puts the issue into context, analyses a number of standards, and presents a set of general recommendations, with a view to shedding light on the situation, organizing and coordinating the intervention of the institutions involved, drawing up protocols for actions and procedures, and attempting to reduce the risk of violating the rights of children whose fathers, mothers or responsible adults in charge of their care have been deprived of their liberty.

4. This paper is a summary of the Technical Guidance Document, “Guidelines for the promotion and comprehensive protection of children and adolescents whose fathers, mothers or other adults responsible for their care are incarcerated”. The full document may be consulted at www...

² Committee on the Rights of the Child. Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”. This document was translated into Spanish and adapted by the NNAPes platform based on the document in English drafted by the Committee on the Rights of the Child after DGD 2011. Available in English at <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

II. Putting the Issue into Context³

5. According to a study conducted by *Gurises Unidos* and the *Church World Service*⁴, in 2012 there were between **1,500,651** and **1,868,214** children in this situation. Subsequently, the *Regional Study "Childhood Counts"*⁵ noted an increase towards 2019, ranging from **1,710,980 to 2,307,048** children with at least one of their parents deprived of liberty, in 25 countries in the region.

6. These studies show that the experience of imprisonment of a father or mother can be defined as an "adverse childhood experience", which is distinguished from the negative effects of other situations by its "unique combination of trauma, shame and stigma", whose long-term effects can include emotional and psychological issues⁶. This is because to the prospective physical separation from their responsible adult, is added a number of situations that contribute to the poverty and social exclusion experienced by the family of the person who is deprived of liberty. Among them, the psychological effects of such a separation, the risk of a breakdown of family relationships or difficulty in maintaining them, the absence of parental care or the risk of a lack of care and/or abandonment or neglect, stigmatization and discrimination and the financial difficulties encountered by carers when attempting to cope with the situation.

7. Owing to the large proportion of persons deprived of liberty who are male, it is usually women who must assume a greater burden to ensure the income and basic needs and care for the whole family. When it is the mother who is sentenced to prison⁷, in most cases, the caregivers are women and only 10% of children and adolescents are left in charge of their fathers or male carers. What also occurs is that the roles of adolescents are adultized because they tend to take on the position and obligations of the person deprived of liberty.

8. The loss or impairment of emotional ties often results in psychoaffective symptoms, such as behavioural changes, aggressive reactions and school maladjustment or isolation, linked to rejection by children's peers and the community, bullying, or neglect on the part of their teachers. Added to that, the imprisonment of their responsible adults causes children to feel shame, dishonour or withdrawal, sometimes leading to identifying with and seeking refuge in peer groups in which prison is accepted and natural, or in which mechanisms are generated to legitimize criminal behaviour.

9. Under such conditions, the stigma of prison affects those who suffer it as a form of symbolic violence that limits the possibilities of the individual of rising above such labels and socially assigned places, and also affects these children, despite not having committed a crime themselves.

10. Other considerations focus on different stages of criminal proceedings, since in arrests and raids, for example, the presence of children is not usually borne in mind, and these events are often physically, emotionally and psychologically violent. There are generally no protocols to determine what containment measures to adopt and how to perform these procedures if there are children present, or to generate conditions that will enable their responsible adults to take immediate steps to ensure that their children are cared for. This should apply not only to children who are present at the time, but also to those who may, for example, be at school at the time of the arrest.

11. With this outlook, we can conclude that contact with the criminal justice system and the deprivation of liberty of caregivers constitute new risk factors or threats to the rights of children, which increase their vulnerability and require a specific approach.

3 Addressing the situation of children whose responsible adults have been deprived of their liberty encompasses those whose fathers or mothers are teenagers and are in contact with the criminal justice, seeking to safeguard their rights as well.

4 "Invisibles: ¿hasta cuándo? Una primera aproximación a la vida y derechos de Niñas, Niños y Adolescentes con referentes adultos encarcelados en América Latina y el Caribe." Case Study: Brazil, Dominican Republic, Nicaragua and Uruguay.

5 Giacomello C., (2019) *Niñez que cuenta: el impacto de las políticas de drogas sobre niñas, niños y adolescentes con madres y padres encarcelados en América Latina y el Caribe*. 1st ed. Autonomous City of Buenos Aires. CWS Regional Office for Latin America and the Caribbean.

6 "Invisibles, ¿hasta cuándo?..." , page 33.

7 Generally, on account of drug-related offences.

III. Regulatory Framework

12. International human rights instruments recognize the family as society's natural and fundamental unit for the development and welfare of all its members, particularly children⁸. The State, the family and society must take steps to protect the family, mothers and children.

13. The Convention on the Rights of the Child stipulates that children may not be subjected to discrimination of any kind, irrespective of their or their family's condition or situation (Article 2); that all measures undertaken for their protection must meet the primary consideration of their best interest (Article 3); that children have the right not to be separated from their parents, except when such a separation is deemed to be in their best interest (Article 9), recognizing their right to participate in all decisions that involve them directly or indirectly, and that it is up to the State to adopt appropriate mechanisms to make their opinions heard (Article 12).

14. The situation of children whose responsible adults have been deprived of their liberty is not regulated explicitly and exclusively in these instruments, nor in the domestic legislation of the States, with a few exceptions⁹. However, there are certain *soft law*¹⁰ instruments that include provisions on the rights of incarcerated persons, such as *The Bangkok Rules*, which contemplate issues specifically related to pregnant or nursing women, and mothers with children who live, or do not live with them in prison¹¹, indicating that "*Children in prison with their mothers shall never be treated as prisoners*"¹².

15. For its part, the United Nations General Assembly, in its resolution 63/241, in its section on "*Children of persons alleged to have infringed or recognized as having infringed penal law*", has established that all States must take into account "the impact of parental detention and imprisonment of parents on children", and as a result, "give priority consideration to non-custodial measures when sentencing or deciding on pretrial measures for a child's sole or primary caretaker, subject to the need to protect the public and the child, and bearing in mind the gravity of the offence".

8 The Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the International Covenant on Economic, Social and Cultural Rights.

9 Among them, the Law on Penal Enforcement and National Prison System of Costa Rica, for example, regards children as holders of rights and has an entire section devoted to underage persons with parents who are deprived of their liberty, explicitly listing their rights.

10 "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment"; "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas"; "United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)"; "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)".

11 The Bangkok Rules stipulate that women should be allowed to make arrangements regarding whether their children will remain in prison with them or left in the care of another person, whether family members or other alternative care; even providing for the possibility of suspending imprisonment for a reasonable period, in keeping with the best interest of the child (Rule 2); that records should be kept of the number of children living within and outside the prison (Rule 3); that women prisoners with children should be allocated to prisons close to their homes (Rule 4); that there should be adequate hygienic conditions available for the care of children and women (Rule 5); that suitable health care should be provided (Rule 9); that non-invasive inspection methods or body searches should be used (Rule 20), preserving respect and dignity, with special care with regard to children in prison or visiting their mothers (Rule 21); that punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with children or breastfeeding mothers (Rule 22), nor include prohibition of family contact (Rule 23), all of which in order to maintain and improve family relationships and facilitate communication between them and with the services that will intervene in the process of social reintegration.

12 The Nelson Mandela Rules.

IV. The Best Interest as a Primary Consideration

16. In the case of children whose fathers, mothers or responsible adults are deprived of liberty, *measures concerning children* are understood to be any decisions, acts, behaviours, services or procedures, whether taken by judicial, prison and administrative authorities, or by their own family or community reference points, which by action or omission are directly or indirectly related to children who are living with the imprisoned person, or who remain outside the prison, but are in contact with the system through visits; as well as those generally adopted or provided for children whose significant adults are serving custodial sentences.

17. Because of the impact these decisions have on the lives of children, the States must adopt higher levels of protection and detailed procedures to ensure that children's best interest is taken into account¹³. In this regard, the Committee on the Rights of the Child has recommended paying special attention to all children's right to a family life and to grow up with their parents, provided that this is in their best interest; the right to information on the status of their significant adults who are in prison; to the application of alternatives to the deprivation of liberty and to limited use of institutionalization for children whose responsible adults are incarcerated, resorting to alternative ways of addressing these problems that are "less violent and more conciliating" than traditional detention.

V. Conclusions

18. Children's contact with the criminal justice and prison system as a result of the incarceration of their primary carers constitutes new risk factors or threats to the rights of children, which increases their vulnerability and requires a specific approach.

19. In the face of this, it is up to families, institutions and the community to take all necessary measures to ensure that these children receive equal treatment and access to the same living and development conditions as all other children who are not in the same family situation; also attempting to break away from the circuit of exclusion to which stigmatization, discrimination and the significance of imprisonment appears to condemn them.

20. It has become apparent that it is necessary to work in a synchronized manner and across agencies on making visible, promoting and protecting the rights of these children, in view of the impact on them of the imprisonment of their primary carers, coordinating to this end procedures and practices that are respectful of their human rights and best interest, and which will make it possible to provide timely and effective responses to the problematic situation that they are undergoing.

21. Decision-makers and persons responsible for the design, implementation and execution of public policies should not lose sight of the fact that these children have committed no crime, but find themselves in a particularly vulnerable situation, owing to the sentence imposed upon their parents.

¹³ Article 3 of the Convention on the Rights of the Child.

VI. Recommendations to the States

22. These recommendations are intended as a guide to a common framework for all member States to address the situation of children whose fathers, mothers or primary carers are deprived of liberty, on the basis of the Convention on the Rights of the Child and The Bangkok Rules, among other international instruments and domestic legislation, in an attempt to ensure the effective enjoyment of children's rights.

1 - Review existing legislation on criminal proceedings and penal enforcement, as well as prison and post-prison policies, seeking to add or broaden the perspective of comprehensive protection for the enjoyment of the rights of children whose fathers, mothers or adults responsible for their care are deprived of their liberty; and eliminate, where appropriate, those provisions that constitute barriers or obstacles to the realization of their best interest.

As we noted in section III, the States have made international commitments regarding the protection of children; against all forms of discrimination against women; against ill-treatment and cruel, inhuman and degrading punishment; and other instruments that focus on the vulnerability of certain groups.

Overall, some countries have made progress in incorporating international instruments and agreements to their domestic legislation, drafting laws and regulations regarding some of the aspects of this "complex social matter". However, it is obvious that the process has been designed mostly from an adult-centred view, addressing the vulnerabilities of adults and the need to safeguard their rights (whether deprived of their liberty or not), without effectively incorporating the special situation and rights of children whose responsible adults are incarcerated.

This is presented as an area of opportunity for States to take a new look at their current legislation, regulations or guidelines, from the point of view of children or adolescents and their rights.

2 - Strengthen existing inter-agency coordination and synchronization opportunities, in order to define and draw up protocols for the actions and proceedings of court, administrative and prison authorities, seeking the comprehensive protection of children whose fathers, mothers or primary adults responsible for their care have been deprived of their liberty.

The problem must be addressed as an issue that concerns the State and society as a whole, ensuring effective coordination between representatives of the governing body for children, the Prison Service, the Judiciary, the Ministry of Education, the Ministry of Health, the Ministry of Culture and the Ministry of Security, or their equivalent bodies, and representatives of Civil Society Organizations involved in these issues. To this end, we recommend that those States that have not yet done so, should set up inter-agency protection boards.

This approach to work is based on the understanding that designing effective public policy requires the active participation of its main State and non-State stakeholders. Social policies, and in particular, those concerning childhood and adolescence, require a holistic perspective both in their development and their effective application, thus making it possible to focus on approaches involving joint responsibility and the mainstreaming of these public policies.

A significant aspect to address in these interventions and synchronizations is related to the different roles that each participant plays in this collective construction. The active and proactive role of government and civil society will be central to reflections based on an intervention's conceptual and methodological aspects, as well as in generating consensus for the design of public policies.

For its part, the State should enable these formal and regular opportunities for interdisciplinary work, with the purpose of moving forward in developing diagnostics, methodologies and proposals, in order to achieve a comprehensive impact on the reality of families, children and adolescents, the community and institutions, in keeping with the overarching approach of public policies.

Likewise, in every case it is important to identify community reference points or “promoters”, who could facilitate processes involving families and the various actors that intervene at each stage of the lives of children whose fathers, mothers or adult carers are deprived of their liberty, and with whom the State’s response could be synchronized.

3 - Conduct interdisciplinary research on aspects of the life and rights of children whose fathers, mothers or adults responsible for their care are incarcerated, and the impact this causes on the full enjoyment of their rights.

To this end, we suggest that protection systems should compile and generate information on the number and main characteristics of children with at least one parent or adult caregiver deprived of liberty. This will provide information to guide the intervention of protection afforded by the various agencies involved, and will make it easier to obtain reliable and accurate statistical data on the basis of which to rethink approach strategies and establish targeted policies in relation to the situation of children with incarcerated parents or responsible adults, whose rights have been violated.

Some of the variables to consider could include: children’s ages, geographical location, place of residence, rights that are threatened or infringed, household composition, income level, educational attainment, illnesses or treatments linked to their vulnerability, and others.

Moreover, when the time comes for the courts to determine a custodial sentence (temporarily or definitively), information should be obtained about whether the people involved have children that they are responsible for, about their family situation and how parental care will be resolved during the period of detention.

The States need to review their official prison statistics systems in their countries and incorporate information about the family situation of persons deprived of liberty.

4 - Establish Operating and Intervention Protocols for situations involving children or adolescents whose fathers, mothers or adult carers are in contact with the criminal justice system, addressing the multiple scenarios in which children may be exposed to violent situations that threaten their rights or increase the chances of these rights being breached, either during their stay in prison or during visits; such as during raids taking place in their homes, in flagrante or planned arrests, or the fact that their fathers or mothers are serving suspended sentences, house arrest or some kind of alternative to a custodial sentence.

Notwithstanding the fact that other issues may be included, we recommend that the Protocols should regulate procedures related to:

- Raids in the presence of children.
- In flagrante delicto arrests in the presence of children.
- Planned arrests in the presence of children.
- Imprisonment awaiting a court decision.
- Prosecution and prison.
- Alternatives to deprivation of liberty.
- Conditions for children’s stay in prison together with their adult carers (infrastructure; search procedures; health and food services, for both children and mothers; access to education; the right to play, leisure and recreation; decent treatment by the child’s parent, the other inmates and prison officials; visits; contact with other family members who assist in the care of children whose fathers, mothers or adult carers are deprived of liberty; the prohibition of punishment for pregnant mothers or with sons or daughters in their charge).

- The birth of children to women in prison. Conditions for infrastructure, proceedings, treatment.
- Conditions for the temporary contact of children with their adult caregivers in prison: visits. Regulations must be in place with regard to everything related to infrastructure and security measures necessary for the meeting; allowing physical contact; the involvement of the child's other family or community members; duration; search or inspection procedures for children; decent treatment of caregivers, of the person deprived of liberty, of prison officials. Procedures to follow during the child's first visit or entry to a correctional facility are very important.
- Children should participate in all decisions that involve them (decision to remain in the prison or outside; with a specific family member or other person; visit requests and conditions of visits, and others).
- Release of persons deprived of liberty to fulfil their parental responsibilities in non-custodial conditions, in consideration of the child's best interest.
- Support for children in the transition entailed by no longer living in prison with their incarcerated caregiver, either because they have reached the maximum age to stay in the facility, or because a protection measure has been decided that involves their removal from the facility.

Thus, while the issues identified above may be addressed by current national or international law, these protocols will attempt to provide a more easily accessible framework for community operators, the staff of teaching and health centres, prison services (personnel controlling people entering and visitors, how long they stay; authorities) and the judicial system (judges, prosecutors, defending counsel); so that they can upgrade their skills and abilities in the care and treatment of children undergoing this particularly vulnerable situation.

5 - Raise the awareness of and provide human rights training to operators, professional practitioners and personnel of the police, courts, prisons, protection, health, education and community services, with a special focus on the situation of children and adolescents with family members who are incarcerated, as well as on the protocols drawn up as a result of the previous recommendation, with the aim of facilitating their implementation.

We suggest bearing in mind particularly, the identification of needs and specific knowledge regarding children's rights, seeking a comprehensive and respectful approach to human dignity, considering the conditions of vulnerability that families may be undergoing.

The central aspects of this training should be agreed during the process of drafting the Protocols.

6 - Draft procedural guides for prison service agents, in relation to the conditions, quantity and quality of visits made by children to their incarcerated adult carers, with a special focus on the existence of appropriate facilities and "child-friendly" settings in which to hold meetings; inspection or search methods that respect their privacy and human dignity, that refrain from infringing the rights of children and adolescents; measures to avoid long waits when entering prisons; the promotion of physical contact and privacy, the right to play, extended visits or outside regular hours to contemplate the daily activities of children, the participation of other significant adults during the visits; the use of alternative means of communication, and others.

Synchronization between the professional practitioners involved (from protection services, the courts or the prison system, or from health and/or education services) and the children's carers is essential during the time prior to their first contact with their significant adult who is incarcerated.

Children should be provided with information regarding the status of their father, mother or responsible adult; where he or she is, and their rights in relation to maintaining contact with him or her. Likewise, they must be provided with social welfare and psychological support if deemed appropriate, so they can

follow the process and the implications of having a significant adult deprived of liberty, conditions and period of imprisonment, and other circumstances to be taken into account.

As recommended in point 4, in addition to the above considerations, the following aspects should also be contemplated:

- a) the conditions of admission to the prison;
- b) the existence of child-friendly settings suited to the presence of children and adolescents, in which to hold meetings with their incarcerated significant adult;
- c) methods of inspection or searching that are respectful of privacy and human dignity, that do not violate the rights of children and adolescents;
- d) measures to avoid long waits upon entering prisons;
- e) physical contact and privacy during visits to incarcerated significant adults.
- f) extended visits, or visits outside the normal visiting hours: these should be adjusted to the children's daily activities, and be long enough to permit developing or maintaining bonds.

In all cases, we recommend that the States should ensure the existence of conditions, and provide mechanisms that encourage the participation of children and adolescents in all decisions that concern them.

7 - Consider greater flexibility in decisions, regulations and procedures to be adopted by the judicial and prison authorities, in relation to any situation involving the presence of children, not only as regards the need to be aware of the context, life history and personal circumstances of those who have committed a crime at the time of imposing custodial sentences, but particularly in relation to any children that they may have in their care.

8 - Evaluate the granting of permission to mothers so that they can go home, to their children's context of development, seeking to promote the exercise of parental responsibilities and contribute to reinforcing bonds between mothers and children, or the family. In the case of visits, allow free contact during meetings and enable alternative channels of communication, through phone or video calls, outside regular "visiting" hours or in circumstances that may justify them, in order to promote greater contact between children and their incarcerated fathers, mothers or responsible adults.

The aim of these latter two recommendations is to facilitate emotional attachment without the barriers typical of these institutions, and in contexts that seem friendlier to children.

It is important that children attending visits should be informed in advance of the situation of their significant adult. It is best that it should be the parents themselves who provide this information. In this respect, it may be desirable to make video calls before the visit and for there to be technical personnel available in order to provide support and guidance on how to give children this information.

9 - In programmes for the social reintegration of incarcerated persons, include knowledge and tools related to parenting skills, as well as information that may facilitate communication with their children.

It is essential to work on the release of incarcerated persons from the moment they enter a prison. In this respect, reintegration programmes should include dimensions of people's lives that encompass their roles as mothers or fathers. In addition, these programmes should address such key aspects for children as the right to a dwelling, access to benefits, work, addiction treatment for their parents, etc.

10 - Design or review existing plans and programmes that aim to provide social, economic and legal support for families who have or have had a significant member deprived of liberty, at all stages of criminal proceedings, including post prison.

They should, preferably, aim to:

- Reinforce their closest social networks so that they can collaborate in the care of children whose fathers, mothers or responsible caregivers are incarcerated.
- Provide interdisciplinary support and containment within children's own context. With regard to prison visits, appropriate social and psychological support must be contemplated, in keeping with the implications of entering a prison and seeing a close significant adult within the prison setting.
- Avoid stigmatization by creating opportunities for peer-to-peer listening and group support and reflection for children and adolescents.
- Promote socio-educational opportunities with significant adults.
- Develop strategies for inclusion through community work in highly vulnerable contexts.
- Include families in strengthening programmes that seek material or financial transfers, with the purpose of repairing the vulnerable situation that they are facing.
- Bolster existing rehabilitation programmes for substance abuse, during imprisonment and after inmates return to the community, in the understanding that timely prevention could prevent children re-entering the protection system as a result of the behaviour of their fathers, mothers or significant adult carers.
- Support the rebuilding of connections between children and their parents or significant adults who have been incarcerated.

It should be borne most particularly in mind that these children and their carers have committed no crimes, nor are they in contact with the criminal justice system as a result of their own actions. Every effort, therefore, should be made to ensure that they enjoy the same rights as other children and that they not be subjected to any form of discrimination as a result of the deprivation of liberty of their father, mother or responsible adult.

All of these circumstances should be assessed and weighed in each specific case, adapting proposals or making reasonable adjustments in consideration of the best interests of each child or adolescent.

11 - Mainstream the gender perspective and the rights-based approach as required in the design and implementation of public policies for children whose fathers, mothers or significant adults responsible for their care have committed a criminal offence, in judicial decisions adopted in consequence, and in the assessment and determination of best interest.

In general terms, we recommend promoting responsible parenting through interventions that seek to strengthen and support families, and eliminate existing gender gaps and stereotypes, bearing in mind the prevalence of female carers and the greater breach of children's rights entailed by the incarceration of their mothers, when they are their only significant adults.

12 - Ensure, by every possible means, the non-institutionalization of children and adolescents. Appraisal criteria should be determined in relation to the capacity to provide care of other significant adults in the extended family or the community, whenever it is not possible to prevent the separation of children from their nuclear families, so that such persons can act as care and protection providers, under the alternative care format.

As reflected in the qualitative effects of imprisonment, children whose significant adults are incarcerated have lost their parental care or are at risk of losing it, for which reason the protection systems must act accordingly.

According to our previous recommendation, and provided that it is in the child's best interest, reasonable and conducive efforts must be made in order to ensure that contact is maintained between the child or adolescent and his or her incarcerated significant adult. When separation is deemed to be necessary, the protection body shall determine who should assume the care of the child or adolescent, ensuring the participation of the person deprived of liberty, wherever possible, and respecting the right of the child to be heard and have his or her views taken into account.

We should mention that it would also be appropriate for both the police involved in a planned arrest, an in flagrante delicto arrest, or a raid, and court officials, to be provided with the necessary tools to inquire, by means of conversations with children or their fathers or mothers, into the existence of family or community members who could take care of the children in the short term.

Subsequently, specialized protection operators should be in charge of delving more deeply into the family situation and assessing the potential for providing care of family members or other responsible adults, ensuring that children's rights are respected at all times.

13 - Appropriate mechanisms should be in place to ensure that children are informed about the process, services, and proposals to resolve their situation and that of their significant adults, making sure that they are heard and that they can express their views on the matter in all decisions that involve them, directly or indirectly, both before the administrative or prison authorities, and before the courts that decide on their situation. Their participation should be ensured in accordance with their evolutionary development.

14 - Preserve children's privacy, safeguarding any personal information concerning their situation or that of their incarcerated fathers, mothers or significant adults, with the purpose of avoiding exposure, revictimization or stigmatization. This recommendation applies to personnel connected to the police, schools, health centres, prison officials and authorities, court officials and employees, protection bodies, neighbours, the media and any persons who, as a result of their contact with anyone in the family, have become aware of the situation.

15 - Produce and disseminate audiovisual, graphic, or bibliographic material or educational guides concerning the adoption of meaningful practices to approach this issue, on the basis of procedures laid down in the protocols, and with the participation, contributions and validation of all stakeholders involved; as well as its use as input for the training mentioned above.

This material should be circulated widely among the various operators, decision-makers, families, children and adolescents and educational, health and social institutions.

BIBLIOGRAPHY

CADONI, L., RIVAL, J.M., and TUÑÓN I. (2019): "Infancias y encarcelamiento. Condiciones de vida de niñas, niños y adolescentes cuyos padres y familiares están privados de la libertad en Argentina". Working paper. 1st Edition. Autonomous City of Buenos Aires: Educa, 2019.

COLECTIVO ARTESANA (2013): "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". Guatemala. At <http://relapt.usta.edu.co/images/Colectivo-Artesana-Informe-Monitoreo-segun-Reglas-de-Bangkok.pdf>

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (2015): "Violence, Children and Organized Crime", v.; cm. (OAS. Official records ; OEA/Ser.L/V/II). At <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>

SAAVEDRA, E., LAPPADO P., BANGO M., and MELLO F. (2013): "Invisibles: ¿Hasta cuándo? Una Primera Aproximación a la Vida y Derechos de Niñas, Niños y Adolescentes con Referentes Adultos Encarcelados en América Latina y el Caribe". Coordinated by CORIA, M., (CWS) and SALLES, G., (GURISES UNIDOS). At <http://nnapes.org/docs/Invisibles-hasta-cuando.pdf>

QUAKER UNITED NATIONS OFFICE (2012): "Collateral Convicts: Children of incarcerated parents"

ROBERTSON (2007): "The Impact of Parental Imprisonment on Children". Quaker United Nations Office (QUNO).

SERPAJ (2010): "Número de hijos/as de padres/madres encarcelados/as calculado a partir de la información obtenida del documento elaborado por el Servicio de Paz y Justicia del Uruguay". Uruguay.

SFPIP (2003): "Children of Incarcerated Parents Bill of Rights". San Francisco Partnership for Incarcerated Parents. San Francisco.

SOZZO, M. (compiler), (2016): "Posneoliberalismo y penalidad en América del Sur", CABA, Argentina. 1st Ed., CLACSO.

VILALTA and FONDEVILA (2012): "Número de hijos/as de padres encarcelados calculado con base en información del estudio realizado en México titulado Perfiles de la población penitenciaria I: frecuencias y descriptivos". Mexico.

COMMITTEE ON THE RIGHTS OF THE CHILD, 30 SEPTEMBER 2011, REPORT AND RECOMMENDATIONS OF THE DAY OF GENERAL DISCUSSION ON "CHILDREN OF INCARCERATED PARENTS". Available from: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

League of Nations (LoN), (1924): Geneva Declaration of the Rights of the Child.

United Nations (UN), (1948): Universal Declaration of Human Rights. Adopted by the United Nations General Assembly on 10 December 1948 as Resolution 217A (III).

Organization of American States (OAS), (1948): American Declaration of the Rights and Duties of Man. Adopted at the Ninth International Conference of American States, Bogota, Colombia, 1948.

United Nations (UN), (1959): Declaration of the Rights of the Child. Adopted by the United Nations General Assembly on 20 November 1959 as Resolution 1386 (XIV).

United Nations (UN), (1966): International Covenant on Economic, Social and Cultural Rights. Adopted by the United Nations General Assembly on 16 December 1966 as Resolution 2200A (XXI). Entry into force: 3 January 1976.

Organization of American States (OAS), (1969): The American Convention on Human Rights Adopted on 22 November 1969 in the city of San José, Costa Rica; entry into force: 18 July 1978.

United Nations (UN), (1988): Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment. Adopted by the United Nations General Assembly on 9 December 1988 as Resolution 43/173.

United Nations (UN), (1989): Convention on the Rights of the Child Adopted by the United Nations General Assembly on 20 November 1989 as Resolution 44/25. Entry into force: 2 September 1990.

Inter-American Commission on Human Rights (IACHR), (2008): Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Adopted by the Commission during its 131st regular period of sessions, held from March 3 to 14, 2008.

United Nations (UN), (2010): United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). Adopted by the United Nations General Assembly on 21 December 2010 as Resolution 65/229.

United Nations (UN), (2015): The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). Originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and then approved in 1957 by the United Nations Economic and Social Council. The revised rules were adopted unanimously at the 70th Regular Session of the United Nations General Assembly in 2015.

Constitution of the Federative Republic of Brazil (1988).

Constitution of the Republic of Bolivia (2009).

National Constitution of Colombia (1991).

National Constitution of the Republic of El Salvador (1983).

Constitution of the Republic of Ecuador (2008).

National Constitution of the Republic of Paraguay (1992).

Constitution of the Bolivarian Republic of Venezuela (1999).

Argentine Criminal Code, T.O. 1984 updated, Law N° 11179 (1921).

Law N° 24660, Enforcement of a custodial sentence (1996), Argentina.

Law N° 26061, Comprehensive Protection of Child Rights, and Decree N° 1293 (2005), Argentina.

Law N° 721 (1984), Penal Enforcement, Brazil.

Law N° 11942 (2009), Brazil.

Law N° 12403 (2011), Brazil.

Children's Code, Law N° 8069, Brazil.

Minimum Standards for the Treatment of Prisoners in Brazil. Adopted at the regular meeting of 17 October 1994 of the National Criminal and Penitentiary Policy Council, as resolution N° 14 of 11 November 1994.

Law N° 2298 (2001), Penal Enforcement and Supervision, Bolivia.

Law N° 548, Children's Code (2014), Bolivia.

Law N° 1970, Criminal Proceedings Code (1999), Bolivia.

Corrections and Conditional Release Act (1992), Canada.

Law N° 65, Penitentiary and Incarceration Code (1993), Colombia.

Law N° 906, Criminal Proceedings Code (2004), Colombia.

Law N° 1098, Childhood and Adolescence Code (2006), Colombia.

Law N° 7594, Criminal Proceedings Code (1996), Costa Rica.

Law on Penal Enforcement and National Prison System (2016), Costa Rica.

Constitutional Comprehensive Criminal Code (2014), Ecuador.

National Law on Penal Enforcement (2016), Mexico.

General Law on Child Rights (2014), Mexico.

Law N° 23337, Children's Code (2000), Peru.

Law 5162, Criminal Proceedings Code (2014), Paraguay.

Law N° 287, Childhood and Adolescence Code (1998), Nicaragua.

Constitutional Penitentiary Code N° 6207/2015, Venezuela.

Penitentiary Law (Decree N° 1027/2016), El Salvador.

Law on the Prison System (Decree N° 33/2006), Guatemala.

Law on the National Prison System (Decree N° 64/2012), Honduras.

Law on the Rehabilitation of Offenders (Decree N° 173/2014), Honduras.

Penal Enforcement Code (Decree N° 654/1991), Peru.

Penal Enforcement Code Regulations (Supreme Decree N° 015-2003-JUS), Peru.

System of Regulations on Incarceration, Decree Law N° 14,470, Uruguay.

Regulations on Incarcerated Persons' Communications (Decree N° 1136/1997), Argentina.

Criminal Proceedings Code, Decree Law N° 3689/41 and its amendments, Brazil.

Law on the Comprehensive Protection of Children, Decree N° 27/2003, Guatemala.

General Comment N° 14 of the Committee on the Rights of the Child (2013), CRC/C/GC/14, of 29 May 2013.

Joint General Comments N° 2 and 22, and N° 4 and 23 of the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, on the human rights of children in the context of international migration, of 17 November 2017.

