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TWO

MY MOM IS BADDER THAN YOURS: WOMEN PRISONERS DEMAND BETTER CONDITIONS FOR MOTHERHOOD BEHIND BARS

Meg Escude and Victoria Law

1. Introduction

In the United States, prison policy separates an incarcerated mother from her newborn baby less than 48 hours after birth. Some prisons have children's centers where incarcerated mothers can live with their infants for the first 18 to 24 months, but such programs are few and far between. In Argentina, incarcerated mothers are allowed to raise their children in prison until the children are at least two years old. They live together in separate wings with slightly better conditions, and there are education and recreation programs for the children.

Over the last few years prisoners and their visitors have held hunger strikes in prisons throughout Argentina demanding improved conditions for mothers and children behind bars. In 2003, approximately 300 women rioted for nine days, demanding that the prison provide a pediatrician. This year a national law was passed, giving incarcerated mothers priority in consideration for house arrest until the child is five years old (Buletín Oficial de la Nación, 2009).

Mothers incarcerated in the U.S. have also challenged and resisted penal policies and, in some cases, collectively organized to create programs. In New York, incarcerated mothers formed the Foster Care Committee. Their advocacy led to new legislation granting prisoners with children in foster care the same rights and responsibilities as parents who are not incarcerated, including the right to monthly visits.

This piece will examine the treatment of mothers and children incarcerated in Argentina and the U.S., as well as their actions demanding that their needs as mothers be recognized and met.

2. Argentina: Incarcerated Mothers Force a Humanitarian Logic

Throughout Argentina, incarcerated mothers have been making demands. They are organizing, protesting, hunger striking, and rioting, sometimes for days at a time. In Argentina incarcerated mothers already have the right to choose to keep their infant children with them in the prison. Now they are demanding decent conditions in which to raise them: They want

pediatricians, healthy and sufficient food, and milk. They want to put their children to sleep in a bed not shared with rats and cockroaches. Since 2003, women have been resisting over these issues in ways that reach newspapers consistently. Now it seems their voices have been heard. In January 2009, a national law (26.472) was passed giving certain people the right to serve their terms under house arrest (Buletín Oficial de la Nación, 2009). Included in that list were pregnant women and mothers of children aged five and younger. Of course no government official would admit that these rights were given in response to prisoners protesting and rioting. However, we are used to reading between the lines spoken by politicians and written by mainstream journalists; between these lines is a heroic story of solidarity, clarity of intention, insistence and the unmatched bravery of mothers defending their children.

Since the economic crisis of 2001, Argentina's jails have been overcrowded, leading to the decline of conditions inside. The women's prison Local 33 in Los Hornos, Buenos Aires, is the country's most crowded and houses around 80 children aged four and younger (Arrechea, 2007). Although the state considers it in the best interest of the child to spend his or her first four years with the mother, the prison does not have a pediatrician on premises, severely limits the food available to children, and does not have an area for them to play outdoors. In December 2003, the first large protest was mounted by female prisoners demanding better conditions for their children (Página 12, 2003). One evening, a small number of women took two prison guards as hostages, broke windows and used objects as drums. They were soon suppressed. The next morning, during visiting hours, 300 prisoners reorganized and together with 98 of their visiting family members and their children, held the visitation room for nine hours. After intense negotiations with provincial authorities, they surrendered after the authorities agreed to a pediatrician on premises 24 hours a day, the right of a mother to accompany her child to outside hospitals for treatment, better nutrition, access to an outdoor patio, and that they not be punished or charged with violations for having protested. There were no deaths or serious injuries (Crónica, 2003).

Protests and riots have continued not only in Los Hornos but in women's prisons across the country. In June of 2005 in La Plata, during an argument between several prisoners and guards about the lack of fresh food for their children, the women wanted to call one of their lawyers. The guards denied the call. In protest, the women gathered in one room, burning sheets in the doorway to keep the guards from entering. This fire accidentally spread to the mattresses; three interns suffered from burns

and smoke inhalation and one later died in a hospital (La Vaca, 2005). A similar protest occurred in 2005, in Los Hornos where 340 prisoners protested for better conditions (La Nación, 2005). It is important to note that these were not demonstrations of aggressive violence or escape attempts. They were demands for specific practical provisions, communicated in the only way the women knew they would be heard.

Their demands have been heard and the answer is the new national law that allows mothers and pregnant women to serve their time under house arrest. This law is an improvement on a similar law passed in 2006 in the province of Buenos Aires, which allowed judges the option of house arrest for mothers. House arrest, however, was extremely difficult to achieve: first, the women had to file the request which could take months or years to be heard in court. Once the request reached a judge, there was no law that required the request be fulfilled. Even if the judge did deem house arrest in the best interest of the mother and/or child, they were limited by the availability of electronic anklets (Santesteban, 2009). When this law was passed, organizations such as the Committee Against Torture, a part of the Commission for Memory of the provincial government of Buenos Aires, spoke out against the weakness of this first attempt. They demanded a nationwide law rather than only a provincial one and stronger wording of the law requiring that judges grant house arrest to qualifying persons. They released this statement in reference to the 2006 law:

The state (of the province of Buenos Aires) extends itself to permit the cohabitation of mother and child, but it does not occupy itself to guarantee the basic human rights of the children. Currently the right to health, the right to education, to play, recreation, cultural and artistic activities, the right to the protection of family, and the right to the equal treatment of children are being violated illegally. (Arrechea, 2007)

Encouraged by this statement, almost all incarcerated mothers across the province of Buenos Aires held a hunger strike in September of 2006 (Arrechea, 2007). Unfortunately this was not enough; as of March 2008, house arrest had not been granted in any case involving a mother or pregnant woman in the province of Buenos Aires (Santesteban, 2009).

The new law, passed in January 2009, requires that judges grant requests for house arrest unless the prisoner is considered a violent danger to her community. The law states that pregnant women and mothers of small children should serve their sentences in their homes until the child reaches five years old, at which time she would be transferred to a penitentiary. This law also includes women who are the sole caretakers of disabled persons, seniors over the age of 70, persons in the terminal

stages of a disease, sick persons who would not be expected to recover in prison conditions, or disabled persons whose condition would be worsened in prison (Buletín Oficial, 2009). One thousand new electronic anklets have been purchased to facilitate the new ordinance. (Santeseban, 2009)

Although the numerous riots, protests, hunger strikes and complaints by imprisoned mothers were not mentioned in press releases announcing the new law, government officials have publicly spoken out about the inhumanity of life within prison. After the law was first unanimously approved by the senate in December of 2008, senator and president of the Justice Commission Rubén Marín spoke to the press in defense of the law, stating that currently prisons “do not possess appropriate structure, capacitated personnel nor the conditions needed to raise babies, to care for extreme sicknesses or to ensure that disabled prisoners do not fall into cruel or inhumane conditions.”

Another senator, Miguel Pichetto stated that the Argentine penitentiary system has “profound failures. I agree that if there is a theft, a minor criminal act, and a woman is pregnant, in jail, she should be freed to care for the child. There is a humanitarian logic to this...” (Santesteban, 2009). Other senators and government officials have also stated that they consider it unjust for children to be punished for their mothers’ crimes. All these statements mention that prisons provide inhumane living conditions for children.

Argentina’s passing of this law not only benefits mothers and children but also serves to reveal the broader moral contradictions behind the idea of incarceration for non-violent crimes. If the very government that builds, regulates, and maintains a prison system admits that it is an inhumane place for children to live in, it is bringing us, as a society, closer to recognizing the dehumanization of *all* persons living inside the modern-day prison system.

3. U.S.: Incarcerated Mothers Fight for Access to Their Children

Unlike mothers in Argentina, incarcerated mothers in the U.S. are separated from their children within minutes of their arrest. Former prisoner Barrilee Bannister, arrested with her sister, recalled, “My sister and I both had toddlers who witnessed our arrest. Police burst through our apartment with guns drawn, ordering everyone to the ground, including our handicapped mother. We were very lucky to have family members step in to take our children before Protective Services could be called” (Bannister, 2005).

Other mothers have not been as fortunate. If no family member is able—and willing—to care for her children, they are placed in foster care.

Michigan prisoner Kebby Warner gave birth while incarcerated and was separated from her daughter Helen after three days. Her father died four months later and Helen was placed with a foster family. When Helen turned two, a judge terminated Warner's parental rights (Warner, n.d.). Over 147,000 children face similar scenarios. In 2007, over 65,000 women in state and federal prisons reported being mothers to minor children. 64% of these mothers were their children's primary caregivers before being arrested (Glaze and Maruschak, 2009). In 2004, only 37 % of incarcerated mothers reported that their children were living with the father. Children of incarcerated mothers are five times more likely to be placed in foster care than children of incarcerated fathers (Glaze and Maruschak, 2009). In 1997, Congress passed the federal Adoption and Safe Families Act (ASFA) requiring that parents' legal rights be terminated if a child is in foster care for 15 of the last 22 months. Once these rights are terminated, parents have no legal relationship with their children (Women in Prison Project, 2009). The termination is irrevocable.

ASFA's impact has been profound, especially given that under mandatory sentencing laws, many first-time offenses, even those that would have been treated as misdemeanors, mandated treatment or dismissed altogether, now warrant harsh sentences. A 2003 study found that termination proceedings (a state's legal actions to end a parent's legal custody rights) involving incarcerated parents increased approximately 108% nationwide from 260 in 1997, the year of ASFA's enactment, to 909 in 2002. In contrast, in the five years before ASFA, the number of termination proceedings increased only 30% from 169 in 1992 to 218 in 1996 (Genty, 2003).

Even when they do retain legal custody of their children, distance severely impacts on a mother's ability to maintain meaningful relationships with her children. More than 60% of incarcerated mothers were housed more than 100 miles from their child's home. Less than 9% were within 20 miles of their child. A 2000 Bureau of Justice Statistics report found that 54% of mothers in state prisons and forty-two percent of those in federal prisons had never been visited by their children (Mumola, 2000).

However, incarcerated mothers have not passively accepted overly harsh separations from their children. In 1975, women incarcerated in California held a "Christmas riot" protesting the cancellation of family visits. They gathered in the yard, broke windows, made noise and burned Christmas trees in a "solidarity" bonfire (Faith, 1993). However, most family maintenance programs have been won by less visible methods,

such as working with prison administrators, filing lawsuits or surreptitiously working with outside groups.

At the maximum-security Bedford Hills Correctional Facility in New York, prisoners run the Children's Center, a program providing a nursery where incarcerated mothers and their babies are allowed to live together for the child's first year. Although the Center is administered by the Brooklyn Diocese of Catholic Charities and funded by the state's Department of Correctional Services, its daily operations rely on Bedford's prisoners (Morash, Bynum and Koons, 1998). The prisoners organized two parenting courses for Bedford's mothers—one on infancy for new mothers and pregnant prisoners and the other a 10-week course called "Parenting Through Films" (Harris, 1986). These were Bedford's first courses both organized and taught exclusively by prisoners. Out of the Children's Center also came more far-reaching change. Until 1983, children of prisoners placed in the New York State foster care system did not have the legal right to visit their parents in prison. Mothers at Bedford formed the Foster Care Committee which, with the help of outside advocates, led to new legislation not only giving prisoners with children in foster care the same rights and responsibilities as parents who are not incarcerated, but also the right to monthly visits provided that the prison was not too far away (Boudin, 1997). In addition, prisoners involved in the Children's Center published a foster care handbook for incarcerated mothers whose children had been placed in the foster care system. The book galvanized advocates from two outside organizations, the Women's Prison Association and the Volunteers of Legal Services, to form the Incarcerated Mothers' Law Project. The Project provides educational workshops about family law, advocacy and legal counseling to mothers imprisoned in New York State.

Many incarcerated mothers, however, lack the cooperation of their prison administrations to develop such programs. In some cases, prison administrations actively hinder their efforts. In 1990, three years after entering the Michigan prison system, Stacy Barker had asked friends to adopt her seven-year-old daughter, providing the girl with a stable and secure home. "This was an open-adoption and they brought her to the prison every other week to visit and I phoned her weekly" (S. Barker, personal communication, March 22, 2006). However, in 1995, in response to an incident at a male prison, the Michigan Department of Corrections (MDOC) began limiting visitation rights at all of its prisons: All visitors, including minor children, had to be on an approved visiting list. Minors were allowed to visit only their parents, stepparents or grandparents. If the prisoner's parental rights had been legally

terminated, even if she had voluntarily given up those rights, she was not allowed to receive visits from her child.

Barker did not allow the MDOC to deprive her of seeing her child. She signed onto *Bazzetta v. McGinnis*, a lawsuit launched by eleven incarcerated women challenging MDOC's visiting policy. Barker testified that exceptions should be made for parents who had voluntarily terminated their rights. The U.S. Court of Appeals found the new visiting policy unconstitutional, stating, "Under our constitution, even those lawfully imprisoned for serious crimes retain some basic constitutional rights" (*Overton v. Bazzetta*, 2002). In May 2002, Barker was able to receive a visit from her daughter and meet her three-year-old grandson for the first time. The following year, the Supreme Court unanimously upheld MDOC's policies, citing that decreasing the number of children visiting benefited the safety and security of the institution (*Overton v. Bazzetta*, 2003). Although the Supreme Court upheld the MDOC's visiting policies in 2003, the suit launched by Barker and her fellow parents demonstrates that women are willing to—and do—challenge policies designed to keep them from their children.

Other mothers have had to work clandestinely to set up opportunities to maintain contact with their children. In 1997, Yraida Guanipa, a mother of two incarcerated in northern Florida, learned about a Lutheran church in West Virginia that provided free transportation for the children and families of the women incarcerated at Alderson Federal Prison Camp. Nothing like that existed for Florida prisoners and their families. "Then I decided that I was going to work tirelessly until I found a church or a sponsor that could provide free transportation for our children and families." Finding a sympathetic organization was difficult, to say the least. She wrote, "As a prisoner, I *cannot* freely write to churches or organizations asking for free transportation for my sons, for fear of being indicted again for 'SOLICITING,'" Guanipa wrote. "As you may not be aware of, as a prisoner we can not 'solicit' anything. Furthermore, I could not ask any of the church volunteers because as volunteers for the BOP they cannot be involved with our families or with us outside of the specific volunteer job. With limited resources, limited budget and limited phone time I could not write or call everywhere or anybody until I found the right organization or church" (Y. Guanipa, personal communication, December 15, 2005).

Despite her limited resources and the risk of being charged with "soliciting," which carries not only a penalty of losing phone and e-mail privileges but also an additional indictment and more prison time, Guanipa persevered (Y. Guanipa, personal communication, February 11,

2006). In the fall of 2005, eight years after beginning her campaign, Guanipa found a church willing to pay for a bus so that 48 children, including Guanipa's two sons, could spend seven hours with their mothers at FCC Coleman. "Even though I am getting released in eleven months I am happy that there will be children that will not suffer as mine did because they will be able to visit their mothers here at Coleman-Camp" (Y. Guanipa, personal communication, December 15, 2005). Since that first church-sponsored bus, Guanipa has found two other churches which paid for the transportation necessary for children to visit their mothers at FCC Coleman (Y. Guanipa, personal communication, February 11, 2006).

4. Keeping Mothers—and Children—Out of Prison

In 2009, the Women's Prison Association released a study of prison nurseries, stating, "Many women parenting their infants in prison nurseries could be doing so in the community instead." The study found that women in prison nursery programs posed little, if any, risk to public safety and that the issues leading to incarceration, such as drug addiction, lack of education and poverty, were better addressed in the community (WPA, 2009, p. 6). The study recommended increasing the use of community corrections instead of relying on incarceration.

This recommendation is not new. In 1987, the Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice, a United Nations workgroup, called for greater use of community-based sanctions rather than incarceration for pregnant and parenting women. In 2000, the Council of Europe Parliamentary Assembly echoed this recommendation. Despite these recommendations, the U.S. continues to send pregnant women and mothers to prison with little to no regard for their children. In addition, only nine states have or are currently developing prison nursery programs for babies born within the prison. Four of these programs have been created within the past five years. Babies and children born before incarceration are excluded from participating (Women's Prison Association, 2009).

The U.S. would do well to follow Argentina's example in both recognizing the importance of the mother-child relationship and taking steps to strengthen, rather than undermine, that bond. At best, current laws impede meaningful relationships between imprisoned mothers and their children. At worst, they terminate them altogether. Instead, the U.S. should be pursuing policies designed to keep both mother and child out of the prison system altogether.

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