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# Lightening the Load of the Parental Death Penalty on Children

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*English*

*Français*

*Español*

*Arabic*

*Persian*

*Japanese*

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### **Other publications on children of prisoners and children of parents sentenced to death**

- Helen F. Kearney (2012)     *Children of parents sentenced to death*
- Oliver Robertson (2012)     *Collateral Convicts: Children of incarcerated parents: Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011*
- Holly Mason-White and Helen F. Kearney (2012)     *Children of Prisoners and (Alleged) Offenders: Draft Framework for Decision-Making*
- Jean Tomkin (2009)     *Orphans of Justice: In search of the best interests of the child when a parent is imprisoned: A Legal Analysis*
- Jennifer Rosenberg (2009)     *Children Need Dads Too: Children with Fathers in Prison*
- Oliver Robertson (2008)     *Children Imprisoned by Circumstance*
- Oliver Robertson (2007)     *The Impact of Parental Imprisonment on Children*

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# Introduction

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One of the little-asked questions in debates over the death penalty is what happens to the children of the offender. The arrest, sentencing and (potential) execution of a parent affect children greatly, but they receive little consideration and less support.

Some of the impacts on children of parents sentenced to death or executed are similar to those experienced by children of prisoners more generally. These include how they experience the arrest and trial of a parent, some of the issues around visiting a parent in prison, and considerations about what they are told and when. Even in these cases, children of parents sentenced to death may experience the issues at greater intensity or with additional aspects that other children of prisoners do not face. But there are also areas where the nature of the death penalty itself, and the procedures accompanying it, mean the experiences of these children are categorically different from those of their peers. These include dealing with the execution itself, and learning to continue living after the execution in the knowledge that a parent has been killed by the State.

This paper begins by providing some basic information about children of parents sentenced to death, issues that persist through the whole of a parent's interaction with the criminal justice system. Next, it looks at issues that are similar to those faced by other children of prisoners, but focuses on the ways in which children of parents sentenced to death are different. For a more detailed account of the situation of children of prisoners worldwide, including recommendations and examples of good practice, read QUNO's 2012 paper *Collateral Convicts*. Thirdly, the fundamentally different issues are considered, those only children of parents sentenced to death experience. There are a limited number of recommendations included throughout: these are not intended to be comprehensive, instead only covering those areas where there is already clarity about a positive way forward.

This paper is part of an ongoing project by the Quaker United Nations Office (QUNO) in Geneva. Having examined the rights and needs of children of prisoners since 2004, QUNO only began to focus on children of parents sentenced to death after the UN Committee on the Rights of the Child's 2011 Day of Gen-

eral Discussion. During that discussion, focused on ‘children of incarcerated parents’, this issue was raised by Amnesty International, and noted as an area needing greater attention. QUNO published *Children of Parents Sentenced to Death* in February 2012 as an initial response, and subsequently undertook additional research on the subject, sent a short questionnaire to all governments with a Mission to the UN in Geneva, and convened an expert workshop of practitioners. Workshop participants came from Africa, Asia, the Caribbean, Europe and North America, and brought psychological, legal, therapeutic, academic, policy and practical experience. They included representatives of a number of NGOs, including Murder Victims’ Families for Human Rights, Penal Reform International, Reprieve and Wells of Hope.

It is from these sources, plus the work of Helen Kearney on earlier versions of this paper, that this publication is drawn. The information and revisions from expert workshop participants strengthened the content of the paper enormously; the financial support of the Norwegian Ministry of Foreign Affairs enabled its production, translation and printing.

This paper looks at many issues, but the group it focuses on is tightly limited. It covers only the natural or adopted children of the offender, only those under 18, and only those whose parent is sentenced to death or executed in accordance with the criminal law of jurisdiction they are in. The impact on adult children (including children who become adults during their parent’s trial or imprisonment on death row), the situation of other children related to the offender (such as siblings, nephews and nieces, grandchildren and step-children), and children whose parent is executed extrajudicially, are not covered. They very likely have similarities with the children here, and like them deserve further attention, research and support.

# Part I

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## Numbers and reactions

### Numbers and background of children affected

The number of children affected by having a parent sentenced to death or executed is unknown (as is the number of children affected by parental imprisonment more generally). The background of the children is better recognised, with existing studies and anecdotal accounts agreeing that children of parents sentenced to death come disproportionately from poor and minority backgrounds.<sup>1</sup> There can be differences between urban and rural families – in some jurisdictions more rural people are sentenced to death for domestic violence/murder, and urban people for drug trafficking<sup>2</sup> – but the general consensus is that the children are from disadvantaged backgrounds.

Regardless of whether the number of people sentenced to death or executed each year is public knowledge or a State secret, the children are not counted. Extrapolations may be possible by looking at the average number of children among prisoners in general (in the few jurisdictions where this is reliably known) or the general population;<sup>3</sup> however, this assumes equal parenting rates between death row/prison and other populations. In reality there can be significant differences: young male offenders in the UK are five times more likely to have children than their peers.<sup>4</sup> In the USA, half of all death row inmates were age 20 to 29 at the time of arrest and 11% were age 19 or younger, which strongly suggests that many of their children will be young.<sup>5</sup> Yet regardless of the numbers, each affected child has their own rights and needs, which should be respected and met.

## Children's responses

*My memory and thinking were impaired by the heavy fog of unrelenting grief (...) I could not sleep and had terrible nightmares (...) My gut ached constantly. I cried all the time.*

Katherine Norgard<sup>6</sup>

Having a parent sentenced to death or executed can affect children in many ways. How they feel and how they act will depend on factors such as the individual personality and circumstances of the child, the reaction of those around them (particularly their primary carer), the stage of the criminal justice process, and the public/media response.

Existing research has consistently connected a parent's death sentence or execution with major psychological and emotional implications for children and families.<sup>7</sup> Observed reactions include:

- Low self-esteem;
- Embarrassment about oneself or others;
- Lying to oneself and others about the situation;
- Inability to explain the situation to others;
- Anger;
- Loss of appetite (in some cases development of eating disorders);
- Loss of interest in playing;
- Loss of interest in school (and poor performance in school, potentially requiring extra help);
- Loss of concentration;
- Loss of sleep;
- Dreams and nightmares (particularly about the parent);
- Bedwetting;
- Halt in menstruation; and
- Psychosomatic pains.

Behavioural issues include:

- Use of violence (including against self, such as biting oneself);
- Misbehaviour and vandalism (possibly to gain attention);
- Intentional self-isolation from others (possibly as a pre-emptive attempt not to be marginalised and isolated by others);<sup>8</sup>
- Starting or increasing time spent in paid work (to make up for the lost income from the imprisoned or executed parent); and
- Increased frequency and dedication to religious practice.<sup>9</sup>

There can be more severe mental health problems, including delusional beliefs (thinking that one is living in another world) and post-traumatic stress disorder (PTSD) symptoms.<sup>10</sup> These may occur at different stages of the criminal justice process (at or after arrest, trial, sentencing, imprisonment or execution) and can be exacerbated by other factors, such as witnessing violence in the home. Many of the behaviours described above may be indicators of trauma, which may or may not be recognised.<sup>11</sup> Non-diagnosis, as well as personal or cultural aversion to counselling or stigma around mental health, may prevent children accessing counselling services.<sup>12</sup>

Some of the negative effects on children may not be remedied even if the parent is ultimately released or not executed. For example, children may drop out of education when their parent is sentenced to death, then be unable or feel unable to go back later.<sup>13</sup>

Children who appear to be coping well, working hard in school or behaving well within the home, may in reality be struggling. It is important to recognise that such behaviours may be attempts to blend in or not to be a problem to the family, rather than demonstrating resilience and going through the normal stages of mourning and recovery from trauma. Drawing attention to the pain and hiding it are both possible responses to the same experience.<sup>14</sup>

There are differences between children who were unborn or too young to know the parent before imprisonment or execution, and older children (particularly those who were close to parent). Very young children (aged 0-2 years) who are separated from a parent sentenced to death or executed may fail to properly develop attachment bonds, while older children may have inappropriate



separation anxieties and impaired development of initiative (2-6 years), impaired ability to overcome future trauma (7-10 years), may reject limits on their behaviour (11-14 years) or prematurely end the dependency relationship with their parent and engage in criminal activities (15-18 years).<sup>15</sup> Failure to develop normally (or within normal timespans) can also be exacerbated if the family's primary focus is on preventing the execution of the parent rather than raising the child.<sup>16</sup>

Girls without adult carers are at greater risk of exploitation, abuse and being trafficked than boys. Public attitudes about the roles of men and women may also mean that boys receive more help (such as to continue their education) than girls, though boys may be expected to take on the role of head of the household, including earning money for the family. Some girls may marry early as a survival strategy. Emotionally, consulted experts felt that girls tended to be more open than boys about the fact that they were affected by having a parent sentenced to death or executed and to be more likely to ask for emotional help.<sup>17</sup>

Children may be emotionally conflicted about their parent. They may be confused about whether they do or should love someone who has committed a serious offence, or unsure whether the parent really has committed the offence. This confusion can be compounded, in different ways, when the (alleged) offence is particularly horrific or notorious, when the child believes the parent was justified in committing the offence (such as by killing an abusive partner), and when the child believes the parent is innocent but the world proclaims the parent's guilt. Their feelings may change over time and/or be affected by the criminal justice process or the attitudes of others – in particular, their personal opinion of and love for their parent is often at odds with public opinion regarding the case (especially if negative statements about their parent are made through the media or other sources) and general public support for capital punishment.<sup>18</sup>

The mourning process can be long, varied and repeated as different stages of the process are reached. In systems with extended and multiple appeals processes, children can experience repeated 'spikes' of fear, sadness and relief as executions are announced, delayed or appealed.<sup>19</sup> Over time, children or the parent on death row may develop ambivalent feelings about the stays of

execution or may even want the execution to happen and be over. Such emotional ‘rollercoasters’ are one of the ways that the impact of death sentences differs from other sentences, because the repeated cycles of hope and disappointment, and the repeated need to anticipate and prepare for the execution, can come to feel unbearable.<sup>20</sup>

Children’s emotional responses can depend on what they are told and when. Not telling the child about their parent’s situation for a long time can result in their being more traumatised when they do find out; conversely, children are often helped when they understand what is happening. This is not as simple as informing them what is happening to their parent: adults should ensure they do not misunderstand the facts (for example, assuming that a parent who has been sentenced to death is already dead).<sup>21</sup>

Not only the children are affected by the death sentence. If a child’s other parent/carer is so affected that they cease to be able to support the child and parent effectively, this is likely to lead to the child having difficulties. Even when the other parent/carer continues to function effectively, the primary focus of (some members of) the family can become preventing the execution, meaning that support to the children, and even normal family interaction and activities, may take second place.<sup>22</sup> Children may devote themselves to this, such as by working on the case, writing to elected representatives or raising money to conduct a DNA test.<sup>23</sup> There may be a risk that children become obsessed by the details of the case, trying to find flaws or opportunities that will help their parent; there were concerns that while this could help adults cope, it may be too much for the children.<sup>24</sup>

For children of prisoners in general, feeling supported and knowing that they are not alone has been identified as a key coping strategy.<sup>25</sup> Experts suggest the same applies to children of a parent sentenced to death. Some children have found it helpful to be able to speak publicly about their feelings, in court or to the media – providing they feel listened to.<sup>26</sup> Children are often helped to deal with their situation if they can help others, such as by giving guidance to other children going through what they have already experienced, or comforting and communicating with the parent in prison.<sup>27</sup> Spending time with other children of prisoners can mean fewer worries about stigma and secrecy, as

well as the possibility of advice or other support.<sup>28</sup> They can also gain comfort and hope if the death sentenced parent of another child is released.<sup>29</sup>

Specialist support for children of parents sentenced to death is often lacking. Support for victims of crime tends not to extend to the offender's family, who are also negatively affected by the offence and sometimes described as 'secondary victims'. Some governments offer direct support to children and families: Mauritius has a means-tested Social Aid scheme supporting children and families of detainees (though not foreign nationals), covering income support, school fees, medical fees and a funeral grant.<sup>30</sup> However, many government-run or government-funded groups may not help children of parents sentenced to death or executed (sometimes deliberately excluding them from categories to which they offer support); conversely, children may be unwilling to ask for or accept help from the same entity that is responsible for killing their parent.<sup>31</sup>

As some children feel reluctant about accepting or asking for help from the State, NGOs may be considered a more acceptable or neutral source of assistance. In such cases, especially when they offer services the State would otherwise provide, NGOs should receive sufficient financial and other State support. These NGOs and other groups that help the children may include children of prisoners support groups, anti-death penalty groups, or groups that specifically support children of parents sentenced to death or executed. Specialist groups are rare, however, because of the low recognition of the needs of children of parents sentenced to death and the small number of them in many areas, among other reasons. While some support is better than no support at all, care should be given before placing these children into support groups for those in very different situations, such as children whose parents are divorcing, as the children may receive little help or even sympathy. Even groups for children of prisoners generally may not be ideal, because of the differences in death penalty cases described in this paper. It is important that children are made aware of available support groups so they can access them; requiring police or court officials to make available information about support sources at arrest, during the trial or immediately after sentencing could be a way of reaching many affected families.<sup>32</sup>

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— Potential good practice: Online therapy —

One possible solution for children in need of but without access to therapy is internet-based therapeutic support. There are already websites where people affected by post-traumatic stress disorder (PTSD)<sup>33</sup> can interact with a therapist, who will email responses to their descriptions and questions. However, at present the Australian-based Anxiety Online programme can only be used in Australia for ethics reasons; therefore, other websites would be needed in death penalty retentionist countries. They could be tailored to serve the particular therapeutic needs of death row families and the surviving family members of murder victims, and could be highly valuable (and potentially lifesaving) for underserved populations in remote places otherwise lacking access to mental health care.

### **Recommendations**

***Specialist support should be provided to children of parents sentenced to death or executed, and children informed about the available support.***

***Children in need should be provided with appropriate mental health care, potentially including online therapeutic support.***

***Support should be provided to the children's carers, as a way of indirectly supporting the children.***

## Part II

# Issues similar to those experienced by other children of prisoners

The focus in this section is on issues faced by all children of prisoners, but the detail is about the experiences specific of children of parents sentenced to death. For more information about children of prisoners in general, read QUNO's publication *Collateral Convicts*.

## Arrest

For many children, the arrest of a parent will be the first time they have had contact with the criminal justice system. The extent to which the best interests of the child are taken into account at this stage can have a major impact on the child's future relationship towards the police, courts and other criminal justice authorities. Existing research indicates that where the impact of the arrest (particularly a violent arrest) on the children is not considered, and where they receive no explanation as to why their parent is being forcibly removed, children tend to be affected in a strongly negative way.<sup>34</sup>

In some jurisdictions, there are offences for which the death penalty is the only sentence following conviction, while in others it is one of a number of possible sentences. Offences that receive a mandatory or optional death sentence are often serious and/or violent; this seriousness may mean that higher levels of violence are used during arrest than in cases without the possibility of the death penalty, violence that children may witness.<sup>35</sup>

Particularly in situations involving ill treatment, children may become alienated from the State and develop a desire for revenge. It may be that the child has witnessed the parent being ill-treated or tortured during the arrest, or that the child or other family members are themselves arrested, detained and possibly ill-treated (because the police were unsure who committed the offence or are trying to put pressure on a suspect who has escaped or is in hiding).<sup>36</sup> Children may be radicalised after witnessing their parents being ill-treated, either

because of their own reactions or because extremist groups focus on them as potential converts. Children who are detained or ill-treated themselves may blame the (allegedly) offending parent for their treatment, rather than the State official; this can (intentionally or unintentionally) isolate children from their parents.<sup>37</sup>

Those close to the victim(s) of an offence may also have a desire for revenge; this phenomenon has been especially noted in murder cases. Children may be subjected to (sometimes violent) acts of revenge, despite not being involved in the offence.<sup>38</sup>

After the arrest of a parent, children may need immediate alternative care arrangements. This can be complicated in cases where children are related to both the victim and (alleged) offender, such as domestic murders. Family members of victims may be unwilling to care for the children because of their association with the suspected offender. When they do take in the children this can be a significant financial burden and may potentially attract stigma towards the new carers.<sup>39</sup>

Not all children are with their parent at arrest, and not all who are receive appropriate information about what will happen to their parent. In some cases, children do not understand the meaning of words used: there are cases of children assuming that a capital crime means the parent will be executed immediately.<sup>40</sup> Children who are not told about the arrest when it happens may find out later from friends, other people or the media – this is a particular risk in cases involving the death penalty because of the often higher level of public and media interest in such cases. In some jurisdictions, journalists may accompany police as they make an arrest.<sup>41</sup> Media reporting can also affect public and prosecutorial attitudes towards cases,<sup>42</sup> with early media demonisation of suspects, describing them as “monsters” and implying that they are guilty, increasing pressure on prosecuting authorities to demand the death penalty. This demonisation process is considered by one expert to start earlier in cases where the death penalty is a possibility.<sup>43</sup> Conversely, there are cases where public concern about the manner of arrest can provoke calls for leniency or a change in methods of arrest.<sup>44</sup> At the other extreme, arrests in some States may be conducted secretly and their occurrence denied by the authorities, even when asked.

## Recommendations

***Guidance should be produced for police officers or others conducting arrests about appropriate language and behaviour to use around children.***

***Guidance should be produced about appropriate media reporting of arrests, so as not to stigmatise the children directly or indirectly.***

## Pre-trial period

Between the arrest and the trial, conviction and sentencing, suspects may be permitted to remain in the community (often after giving financial or other guarantees), or they may be detained in prison. This is a period of high uncertainty and stress for children of suspects.<sup>45</sup>

While children's emotional and behavioural responses are largely similar to those at other stages of the criminal justice process, the uncertainty at this period can add to the distress.<sup>46</sup> However, the underlying cause (fear and uncertainty about what will happen to the parent) may not be resolved until the judicial process (including appeals) is complete.<sup>47</sup> In the pre-trial period children can be very defensive at school, particularly where they are from the same community as the crime victims. There have been reports of their having fights with either the victim's family or others who know the victim.<sup>48</sup> Support from carers and other family members can give the children a feeling of security during this time, though this may be difficult as it is also a 'peak period' of stress for these others.

In some situations, pre-trial detention is the default response to someone charged with a capital offence; in others, payment of financial guarantees (bail) or accepting restrictions on movements or activities is used instead.

International standards<sup>49</sup> state that pre-trial detainees, who have not been convicted of any offence, should have less restrictive conditions in prison than sentenced prisoners – for example, being able to touch visiting children when that is forbidden post-conviction.<sup>50</sup> In practice, many pre-trial detainees have family and other outside contact restricted,<sup>51</sup> either as a general prison restriction or because of fears that they will interfere with the trial (such as by influencing wit-

nesses). Being prevented from seeing a parent can be very hard on children, especially those who have witnessed their parent being taken away.<sup>52</sup>

When children do see a parent, many have questions and want to know more about the situation, but lawyers often advise clients not to talk about the offence. This means that children may only receive information via gossip or media reporting; alternatively, they may hear nothing until a later point, such as when the details are described in court. Lawyers may also recommend non-communication between members of the victim's family and of the suspect's family, which can mean children with links to both families become isolated from some of their relatives.<sup>53</sup> (Given that 40-70% of murders of women in Europe, Israel, South Africa and the USA are linked to intimate partner/family-related violence, this is a significant population – see *Child victims and witnesses who are also children of offenders* section for more details.) Contact may also be lost if members of the victim's family decide to break contact with the children, or if both families want contact with the children but are in conflict with each other.

#### — Potential good practice: Reaching out between families —

Efforts by the families of offenders to contact the families of victims, or vice versa, can help both parties deal with events surrounding the offence. Those involved report greater understanding of what the other party is going through, feeling listened to and, in the case of offenders' families, reduced feelings of guilt. These contacts may occur informally, when family members meet unexpectedly or directly approach each other. They may happen formally, initiated by a third party (such as someone associated with the defendant's legal team) and only occurring when everyone involved consents. They may be a one-off occurrence or a series of direct or indirect contacts. Such 'reaching out' approaches focus on healing the harm done rather than imposing punishment, and take place alongside standard criminal justice processes. They can be very beneficial to children by reducing mistrust and lessening trauma, especially in cases of intra-familial murder.<sup>54</sup>

Suspects may be detained pre-trial because they can't afford bail, rather than because they are a danger to society or pose a risk of tampering with witnesses or evidence ahead of the trial. This is particularly concerning in jurisdictions



with very long periods before cases come to court – for example, estimates of two years have been made for death penalty cases in Malawi.<sup>55</sup> Long pre-trial periods also mean longer periods of uncertainty for the children and (potentially) of restricted or prohibited contact during the pre-trial detention. Even if the defendant is released or acquitted at trial, time spent in pre-trial detention can mean a loss of jobs, education and housing for the defendant and family.<sup>56</sup> There have been programmes in Jamaica where provision of legal aid has meant that suspects apply for and receive bail, therefore avoiding unnecessary pre-trial detention and separation of children from their parents.<sup>57</sup>

Sometimes children or other family members may not be given information about a parent's pre-trial detention, particularly if the case is considered sensitive – allegations of terrorism were noted as especially likely to result in State secrecy. Families may not receive information about the fact of the pre-trial detention, its location or conditions, and opportunities for visiting or other contact may be limited or fully denied.

### **Recommendations**

***Arrangements should be made for children to maintain contact with all family members, provided this is in their best interests.***

***Pre-trial detention of suspects should be used only in accordance with international standards: where there is reasonable suspicion that the suspect committed the offence, and where there is risk of their absconding, committing further offences or interfering with the process of the trial. Childcare responsibilities should be considered when deciding if someone is likely to abscond.***

## **Trial**

Children may or may not attend the trial of a parent potentially facing the death penalty. Court rules, decisions by their parents/carers, ease of getting to court, and competing commitments such as school may mean children do not attend.

Some children who attended their parent's trial found it useful – it can answer some questions the children would otherwise have and may be the first time

they have seen their parent since the arrest. It is important to prepare children for what might happen, including that they may be prevented from touching their parent (young children can find this particularly distressing) and that the court environment may be hostile or adversarial. There are certain parts of the trial that may be particularly appropriate or inappropriate for children: they may need to be shielded from graphic accounts of the offence, while it can be beneficial to attend the sentencing or sessions where positive testimonies and character references about the parent are heard. It may be helpful to discuss with the parent's lawyer what is likely to happen on specific days in court, so that the family can prepare accordingly.<sup>58</sup>

Both the children and their accused parent may not speak the language used in the court, either because the trial is taking place abroad, because the child/parent belongs to a linguistic minority or because the court uses a minority language that the child/parent doesn't speak (such as English in Pakistan).<sup>59</sup> Additionally, the words and phrases used in court may be unfamiliar to children (and adults), even when spoken in the same language.

Children may address the court if they are a victim or witness of the (alleged) offence, or if they are providing evidence about the character of their parent. Children who have the opportunity to address the court, whether or not they do so, may feel guilty if there is a negative outcome for their parent. Children who do not go may wonder whether they could have helped their parent by speaking, while those who do attend can feel a responsibility to say the 'right thing' to ensure their parent isn't sentenced to death.<sup>60</sup>

Children may benefit from personal or psychological support around the time of the trial, whether formal (such as from a therapist) or informal (such as from another child who has previously had a parent sentenced to death).<sup>61</sup> Their carers may also need support, as the trial is stressful for carers too; helping carers can enable them to better support the children. As mentioned above in *Children's responses*, in the rare cases where support is provided partially or fully by the State, children or families may be unwilling to accept it as the State is the entity trying to execute the parent.<sup>62</sup>

— Potential good practice: Learning from the experience of other children —

Children whose parents have already been sentenced to death or executed can help adults and children currently going through the process. These children (who may have reached adulthood since their parent's sentence or execution) can share their experiences and provide recommendations to other children: for example, explaining their own regret at not attending a parent's trial. Additionally, they can give advice to professionals on how to include or support the children. Being able to help others can also assist the older children in coping with their own situation.<sup>63</sup>

When a parent is being tried abroad, it is extremely unlikely that the children will be able to attend or follow what is happening. Therefore it is particularly important for the family to be kept updated, either by consular officials or other organisations; facilitating communication with the family can also support the defendant. More details can be found in the *Foreign nationals* section below.

## Sentencing

In some cases, a guilty verdict will automatically result in a death sentence (implemented immediately or after a delay). In other situations, courts may choose from a range of available sentences.

Some people are exempted from receiving the death penalty under international human rights law and humanitarian law. They include persons who were under 18 at the time of commission of the crime<sup>64</sup> (who may have children of their own), and pregnant women.<sup>65</sup> People who are mentally ill or below a certain intellectual threshold are also often exempted.<sup>66</sup> Additionally, the African Charter on Rights and Welfare of the Child forbids the execution of 'mothers of infants and young children',<sup>67</sup> though the limit of 'young' varies and is reported to be as low as three months in Egypt and Jordan.<sup>68</sup> What is less clear at present is how these exemptions are implemented. Who ensures that relevant information about pregnancy or a young child is introduced? What is the response – to impose a different sentence, commute the death penalty (immediately or after a period of time) or to stay the execution only until the mother is no longer pregnant or her children stop being 'young'? It is also unclear from

research to date what impacts these different approaches have on the child in the short- and long-term.

There may be hearings to identify mitigating circumstances: child impact statements (whether by the child or others such as advocates or social workers) may be included here. However, in some jurisdictions courts are forbidden from considering the impact on families of a death sentence, or choose not to consider it because “otherwise they would never execute anyone”.<sup>69</sup> Evidence presented as mitigation may bring out details of the family’s traumatic history: these can be humiliating or upsetting for the children (particularly if not previously known), but are revealed because they may prevent a death sentence being imposed. However, the child and family will have to live with the consequences of this information being made public – both the children’s understanding of their family and the attitudes of others may radically change.

— Potential good practice: Child impact assessments at sentencing —

South Africa doesn’t have the death penalty, but does consider the impact of potential sentences on dependent children when sentencing a parent. In the case *S v M* in 2007, the Constitutional Court found that the South African constitution’s provision that the best interests of the child are a paramount consideration in issues that concern them meant that courts must consider the impact that the range of possible sentences would have on children, using a court-appointed social worker, and weigh that factor along with other issues. Where the parent is imprisoned, the State is responsible for ensuring they have an appropriate alternative carer (who may be another parent). This approach helps ensure that the child’s rights and welfare are both protected.

The other way that children may input at the sentencing stage is if they have been a victim of the offence and make a victim impact statement or similar. They may have mixed or conflicting feelings towards their parent; some children may benefit from writing rather than speaking the statement, participating remotely via video link or having somebody else make the statement on their behalf.<sup>70</sup> However the children participate, it is important not to make them feel responsible for saving their parent or that they need to say the ‘right thing’, as this can lead to their blaming themselves if the parent is sentenced to death.<sup>71</sup>

Pressure to impose a death sentence may come from the media and/or the public, as well as the prosecution. Cases involving the (possibility of the) death penalty tend to attract high levels of media attention; defendants may be demonised even before a verdict is reached. Such labelling can stigmatise the child, regardless of the outcome of the trial (for more on this, see *Stigma and public attitudes* section below).

In some jurisdictions, the family of the victim may be able to prevent a death sentence by forgiving the offender. In some Muslim countries, this forgiveness may involve financial compensation known as *diyya* or 'blood money'. Different Muslim States have different laws regarding the payment of *diyya*, and the amount of financial compensation. In the United Arab Emirates, for example, 17 Indian migrant workers convicted of the murder of a Pakistani national had their death sentences commuted in September 2011 to two years imprisonment, already served, and the payment of *diyya*, after the victim's family accepted 3.4 million Arab Emirates Dirhams (approximately US\$1 million) and dropped their request for an execution. Other countries that permit the practice of *diyya* include Saudi Arabia, Iran, Iraq, Libya, Pakistan and Yemen. It is generally accepted that it is the next of kin who must agree to accept *diyya* as an alternative, which may very well have implications for the victim's child if they are the next of kin, especially in situations where the victim's child is also the offender's child. Equally, it can be devastating for families if they cannot afford to pay the required sum, as their hopes are raised that they may be able to save the life of the parent but they are unable to fulfil the condition.<sup>72</sup>

Children (or other family members) may not understand what happens after a death sentence is imposed. Some assume that their parent will die in prison rather than be killed, or will be executed immediately,<sup>73</sup> whereas in reality there may be many years of living on death row, because of an appeals process, because an execution order has not been signed by the relevant government minister or official or because a moratorium on executions is in place. Children may also be unaware of policies or rulings that may affect the likelihood of execution, such as the Ugandan Constitutional Court decision in 2006/2009 that required all those held on death row for more than three years to have their sentences commuted to 20 years in prison.<sup>74</sup>

## Recommendations

***The impact of potential sentences (including death sentences) on the child's best interests should be considered when sentencing.***

***Death sentences should not be imposed or carried out on groups exempted under international law.***

***Following sentencing, families should be given information about options open to them (such as appeal opportunities) and their potential consequences, to enable them to make informed post-sentencing decisions.***

## Imprisonment on death row

Often there is a period of imprisonment on death row before an execution, which can last from days to decades. Some of the issues children face during this time are similar to those for other children of prisoners, but there are important differences. They constantly wonder about what may happen, which is extremely stressful and may result in physical and mental health problems. Death row visiting conditions tend to be more restrictive than for other prisoners: in some cases, once a parent is arrested, the child is never able to touch them again.<sup>75</sup> And the stigma may be greater than for other prisoners' families, if it becomes known that they are visiting someone on death row.

Prisoners on death row are usually placed under maximum security conditions. Individual assessments of the risk a prisoner poses tend only to relate to whether still further isolation and restriction is required for those classified as dangerous; there is not a mechanism for giving lower risk prisoners less restrictive conditions. Certain conditions, notably those of constant isolation, can damage the prisoner's psychological wellbeing and ability to parent.<sup>76</sup>

Death row conditions often mean fewer visits are permitted even than for parents given life imprisonment: in Belarus, prisoners on death row are entitled to one short (four-hour) family visit per month, in accordance with Article 174 of the Criminal Executive Code. In Uganda, prisoners are entitled to two visits per week; however, many inmates do not receive visitors because most of them come from the country, and family are unable to afford the fare to visit

them. In Tunisia, prior to the Arab Spring in 2011, prisoners on death row were denied any contact with their families for more than 15 years (including visitation and through letters). However, following the revolution a measure was put in place to recognise the right of those on death row to receive visits from their relatives.<sup>77</sup>

Where visits do happen, they can involve extensive security procedures, limited or no contact with the parent (instead seeing them through glass or a net) and potentially hostile staff. Some children do not visit, possibly because they do not want to (repeatedly) go through these experiences,<sup>78</sup> or because their parent/carers are unwilling to accompany them. Parent/carers may themselves find the visits too difficult, are unable to cope with the children's distress following visits, or have a bad relationship with the imprisoned parent and do not want contact. Minimum ages for visiting mean that in many jurisdictions children cannot visit without an accompanying adult, even if they had the resources to travel themselves. Two possible ways to enable this are allowing older or more mature children to visit unaccompanied, and having alternative visitors such as social workers or NGO staff/volunteers accompany the child.<sup>79</sup>

Prisons with death rows can be even more scarce and remote than prisons generally, meaning the time and cost of visiting are increased. Children who are in homes for children of prisoners/children of parents sentenced to death may be closer to the prison than others and be helped in dealing with the bureaucracy and other aspects of visits, as these alternative care institutions are designed to meet the specific needs of this group. However, it is important not to assume that all children of parents sentenced to death will be better off in such environments: where alternative care is genuinely needed, it should be in the setting that 'will, in principle, best meet the child's needs at the time'.<sup>80</sup>

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— Potential good practice: Supported visits —

Some NGOs provide support for children from one or more families to visit a parent on death row. Support can include transport to and from the prison, information in advance about what to expect (and ensuring that the visiting children have the necessary documentation and no forbidden items), and the chance of travelling with others in a similar situation. Children appreciate being with people who know and understand their situation, so they do not have to hide their feelings and can ask for help if they want to. The NGO organisers may also be able to engage prison authorities and staff in a non-confrontational way to improve access, perhaps through longer visits or creating a more child-friendly atmosphere and surroundings. Supported visits can also overcome the problem that exists in some countries of women and children being unable to travel alone (see below).<sup>81</sup>

The stigma and shame families face about visiting an imprisoned parent can be greater with a death sentence, and there is stigma in some countries towards women and children who travel to prison unaccompanied – something that may be difficult to avoid if the father is imprisoned. Stigma can also come from others within the prison: where death row and other prisoners receive visits together, prisoners on death row may be brought in at a different time and/or wear different colour uniforms to other prisoners, easily differentiating them. The family may alternatively be given a particular badge or other signifier marking them out as visiting someone on death row. These various forms of stigma may mean that children, or their accompanying adults, stop visiting.<sup>82</sup>

A significant factor affecting children's enjoyment of visits is the attitudes of prison staff.<sup>83</sup> There are accounts of sympathetic guards, who look away to allow a family to hug when officially contact is forbidden, as well as of families having to wait a long time to see the parent, or even pay bribes, because of poor relationships with the guards. Changing physical, technological and security conditions in prison can reduce contact between staff and prisoners, which makes it harder to build up a relationship and provides fewer opportunities for guards to show kindness. At a higher level, progressive or regressive prison governors or superintendents can affect the approach of a whole prison.<sup>84</sup>



There are certain prison conditions that have been found to contravene regional human rights standards, in the European and Inter-American systems. These include: ‘Keeping a person imprisoned in overcrowded conditions, without ventilation and natural light, without a bed to rest on or adequate conditions of hygiene, in isolation or incommunicado, or with undue restrictions in the visiting regime ... On other occasions, the [Inter-American] Court [of Human Rights] has indicated that undue restrictions in visiting regimes may constitute a violation of the right to humane treatment’.<sup>85</sup>

Existing research on children of prisoners<sup>86</sup> has found that it is generally beneficial for a child to maintain a relationship with their imprisoned parent. Prisoners can become good parents and role models, even if they have not been so prior to incarceration. However, there are differences with a parent sentenced to death. The development of the parent-child relationship may be slowed or halted. Passing a death sentence starts a grieving process in the child that can continue for years and can be uniquely complicated if there are numerous death warrants issued and successful appeals to stay the execution. When children and parents do meet, both may focus on the positive in the short periods they have together, so as to protect the other and not make them sad. While this can appear good, it means that problems are not discussed and deeper problems remain unresolved. Children may have difficulty telling the parent about happy times, because they feel guilty being happy while the parent is on death row (this guilt is sometimes imposed by the parent). If there is a possibility that good behaviour in prison can lead to improved conditions or the sentence being commuted, this may mean the parent does not inform the child and family about difficulties in prison, including poor treatment or abuse from staff or other prisoners. Some States are not currently executing prisoners (whether due to a formal moratorium or for other reasons) but do still sentence people to death and/or do not commute death sentences. This creates additional uncertainty for the family as the State could resume executions at any time.<sup>87</sup>

As with children of prisoners generally, telephone contact (where it exists) is much more expensive than phonecalls in the community, may only be permitted at set times (therefore limiting the family’s ability to be out of the house at those times) and may be limited to landline numbers rather than mobile tel-

ephones. In some jurisdictions, prisoners on death row have no telephone contact with family.<sup>88</sup>

### **Recommendations**

***All children (regardless of their care setting) should be supported to visit a parent on death row, provided this is in the child's best interests.***

***Staff should receive training on how to appropriately respond to and behave around children visiting a parent on death row.***

***Identifying or stigmatising activities, such as having death row prisoners enter communal visiting rooms separately, or having prisoners or families wear identifying markers, should be stopped.***

## **Stigma and public attitudes**

*When we walked into the courtroom, people gave us dirty looks, just because we belonged to our father. You wonder, what did we as kids do to deserve this?*

Misty, child of parent sentenced to death<sup>89</sup>

People sentenced to death or executed are often viewed negatively by the public. Their children and the children's carers are frequently stigmatised by association, and this stigma may continue even after the execution, with children identified with their dead parent.<sup>90</sup>

Stigma may be because of the offence or because of the sentence. Certain offences are particularly stigmatised: depending on the country these may include murder, paedophilia, blasphemy, adultery or terrorism.<sup>91</sup> Stigma can come from the public in general, or from specific groups: in some jurisdictions, the most extreme or demonising language comes from prosecutors as a way of dehumanising the suspect and encouraging use of the death penalty.<sup>92</sup> Negative attitudes may even come from other families of persons sentenced to death, where adults in particular may regard their family as respectable but others as untrustworthy 'criminals'.<sup>93</sup> In some cases, community feeling about the (alleged) offence can result in mob justice or individuals taking revenge

against the (alleged) offender or their family. This can be linked to suspicions or claims that the family is involved in other stigmatised activities, such as witchcraft.<sup>94</sup> Community hostility may be so great that families go into hiding or move to a different area where they are not known. Children learn to isolate themselves and not to talk about the situation, even denying it if asked. Such self-censorship can last years after the execution, potentially becoming a life-long taboo that is kept even from intimate partners.<sup>95</sup>

Children may not receive support that would benefit them, either because they do not seek it (due to actual or perceived hostility towards their situation) or because it is not available. Where systems exist to support families of crime victims, they generally do not extend to the offender's family, who are not perceived as victims. The disparity may extend to information: there have been instances where the family of a murder victim has been informed of an upcoming execution but not the offender's family.<sup>96</sup>

Schools, which existing research has found have a major impact on the lives and wellbeing of children of prisoners,<sup>97</sup> can be a source of stigma or support for children of parents sentenced to death. There are reports of school authorities being concerned that children of parents on death row will get into fights and consequently forcing them to leave school; providing staff with information about the situation and needs of these children may help to counter such attitudes and enable staff to better provide support.<sup>98</sup>

Potential good practice: Lesson packs for schools

Lesson packs and teacher training materials have been produced to help teachers and pupils think about the subjects of children of prisoners and children of parents sentenced to death. These materials can be useful even if no children in the class are known to be affected, as children may confide in the teacher only after the lesson. They help to sensitise children and teachers to the situation, including the fact that a person may have done something wrong but that does not necessarily make them a bad person.<sup>99</sup>

Reactions are not exclusively hostile towards the offender and family. Not all communities support the death penalty – opposition may be particularly likely in places that have abolished the death penalty or where the parent is being

tried and sentenced abroad. In such cases, issues around stigma and support for the child (and family) may be very different to those where the death penalty is popular or considered 'normal'. If the parent was engaging in political or religious activism on behalf of a community that feels marginalised, they (and their children) may be feted and seen as 'heroes'.<sup>100</sup> Among communities whose members are disproportionately sentenced to death or executed, such as African Americans in the USA, the death penalty can be seen as unjust and therefore those sentenced to it are viewed as victims not villains.<sup>101</sup> Having a parent sentenced to death can make children popular, "but in the wrong way" – there is an assumption that the child will themselves offend.<sup>102</sup>

Some children and families respond to stigma by rejecting it, speaking out about their situation, educating others about the impact of death sentences and executions on offenders' families, and campaigning publicly against the death penalty. They may also gain support from anti-death penalty groups, where people do not stigmatise them and may provide practical assistance on their parent's case.<sup>103</sup>

The media is believed to have a major impact on public attitudes and language around the death penalty. The use of demonising language (of both the suspect/offender and of the offence) and of sensational or intrusive reporting can create or increase public hostility. Depictions of death row and executions in non-news media (particularly in television programmes and films) can re-traumatise families. In films, only bad people tend to be executed: this may confuse younger children particularly. Experts recommended that NGOs and others should discourage the use of dehumanising language and support non-sensational descriptions of events and testimonies.<sup>104</sup> Such efforts may be particularly important on electronic and social media, where children and young people increasingly get their news and where anonymity can mean greater cruelty or harshness than occurs offline. Similarly, rules on what can be reported in cases involving children whose parent is sentenced to death or executed may help, whether these are self-regulating rules, guidance from outside or international bodies such as the UN Educational, Scientific and Cultural Organization (UNESCO), or statutory provisions (similar to reporting restrictions that some countries have in cases involving child offenders).<sup>105</sup>

The media may help children of parents sentenced to death by enabling their voices to be heard. This may happen more commonly in the final period before execution and may be empowering or healing for the children to be able to tell their story. While speaking out can sometimes advance the specific case of the family member or change attitudes towards the death penalty more generally, it can also be upsetting for the family (for example, if information about a botched execution is made public).<sup>106</sup>

### **Recommendations**

***Sensitise public to the impact of a parental death sentence on children by providing information about their general situation.***

***Provide specialist guidance for schools, the media and other groups likely to interact with or affect the lives of these children.***

## **What to tell the children**

Whether, when and what a child should be told about a parent's death sentence or execution is a much-discussed issue. While each child's personality and circumstances will require a different response, existing research about children of prisoners more generally has concluded that it is better to tell the child, in an age-appropriate way, the truth and that lying to them is intrinsically unhelpful.<sup>107</sup> Telling the children in a planned way and in a supportive atmosphere was felt to be better than having them hear through the media, peers or neighbours; this opportunity can also be used to discuss with children the language associated with capital punishment – including ugly names the children may be called. Sometimes one parent/carer may want to say something and another not, which can exacerbate tension within families. It is important not to give children definite assertions that may be untrue (either that their parent would definitely die or would definitely come home).<sup>108</sup>

Even after being told about their parent's situation, children may continue to receive conflicting information, from various sources. Parents in prison may lie to the children to make themselves look better, while other authority figures such as priests may make definitive statements that turn out to be untrue, such as "God told me that your father will be released". Children may be vulnerable

to religious groups that give out easy and attractive messages, proselytising or preying on people's grief and weakness.<sup>109</sup>

It is also important to ensure that children do not misunderstand the situation – there are cases where children have been told the truth in such a way that they misconstrue it (in one case thinking their parent was away studying), and others where children have assumed that once a death sentence has been imposed the parent is already dead, whereas they live for years on death row. Such misunderstandings can mean the parent-child relationship is severed and will have to be rebuilt (or built from scratch, in the case of young children), either while the parent is still in prison or following release if they are exonerated or their sentence is commuted.<sup>110</sup>

While there is general agreement among practitioners that the age and maturity of the child are relevant factors when considering what to tell them, details of what to say to differently aged children are less clear. Child-friendly publications that explain the situation to children (and families) are often helpful, and publications can be produced for different groups and in different languages. Experts considered it inappropriate to tell any children about graphic details of the offence, and that in a system involving multiple appeals and execution dates it may not help children to know every detail and therefore experience the emotional highs and lows associated with them. Experts felt that details about the execution should not be offered at the time it occurs, but if the child asks questions, these should be answered honestly.<sup>111</sup>

— Potential good practice: resources to explain the issues —

Picture books, novels, web-based materials and other resources have been developed to explain to children of prisoners in general what is happening to their parent. These have proved helpful in explaining what is happening and providing a sense that they are not alone in going through this experience. It would be helpful to have specific resources for children whose parent is sentenced to death, including information about where the children themselves can seek different kinds of help.

## Recommendations

***Children should be told about a parent's situation in a planned and age-appropriate manner.***

***Children should not be told something will certainly happen when it is uncertain.***

## Carers and alternative care

Children of parents sentenced to death may change carers at one or more points during or after a parent's arrest, trial, imprisonment and execution. They may live in the same place(s) as before, but with different people caring for them, or they may change home as well. As with other children of prisoners, the carer (whoever they are) is a major figure in the children's lives and potentially a significant source of support. Children of parents sentenced to death or executed will experience similar issues to other children without parental care, though their and their parent's situation means some of these may be different or more extreme. A major difference is that for children who are orphans, this will be at least partly because of the State's actions in executing one or more parents. However, in some jurisdictions children orphaned in this way do not receive State assistance, despite having done nothing wrong themselves.<sup>112</sup>

In all cases involving alternative care, the *UN Guidelines for the Alternative Care of Children* should be consulted.<sup>113</sup>

As with other children of prisoners, grandparents are often the first to step in to care for the children, followed by other family members and then either foster care or institutional care. Children may feel a conflict of loyalties between their love for the executed parent and love for their carers; it is important to assure children that it is acceptable to love both.<sup>114</sup> All alternative carers will likely benefit from information about the specific needs of these children, as well as financial or other support from the State, which has a responsibility towards children whom it deprives of parental care under Article 20 of the Convention on the Rights of the Child.<sup>115</sup>

While some are in institutions catering to a range of children, other children of parents sentenced to death or executed live in institutions with other children in the same situation. This can provide a more supportive environment, both in terms of the attitudes of other children (in particular, not having to hide, explain or justify their situation) and in terms of staff awareness and support. Children of parents sentenced to death or executed may have different or additional care needs compared to other children; these may not be recognised by all carers. Accommodating children close to the prison can enable them to visit more easily (with time, distance and cost all reduced), while carers with experience of several children of parents sentenced to death will be able to provide information and help with prison bureaucracy. One NGO, Morning Tears International, which cares for children of prisoners including those on sentenced to death/executed, has developed minimum standards and protocols on treatment of children of prisoners in care. It would be valuable if these could be shared and for others to be asked whether they also have such standards and protocols to enable substantive professional discussion of these issues.<sup>116</sup>

Potential alternative carers, including other family members, may not take in the children. This can be because they are unable to do so, due to the additional costs of supporting the children, lack of accommodation or similar. It may be that they are unwilling, due to stigma, worries that the children will 'infect' other children, because it will make the carers targets of revenge attacks by those affected by the offence, or concerns that the children will bring shame, bad luck or a 'curse'. Sometimes, alternative carers may take children in because of the benefits the children bring as domestic workers or house slaves, or in the hope of claiming an inheritance or marrying them off for financial benefit. However, without a carer willing to take them in, children of those sentenced to death or executed will have to look after themselves, which often means the vulnerable position of living on the street. In some States, the children, especially girls, become exposed to a much higher risk of becoming themselves victims of crime, especially rape (including risk of contracting sexually transmitted diseases), and other forms of exploitation.<sup>117</sup>

If the surviving parent (usually the mother since more men than women are sentenced to death) finds a new partner, this can affect the children. They may be able to provide an extra source of support for the children and to be a replacement or additional father/mother figure. Conversely, the new partner



may reject the children or not want the children to visit the parent on death row. In some settings, often involving extreme poverty where an income-generating partner is necessary for continued existence, the mother may abandon the children to make herself more attractive to potential partners.<sup>118</sup>

### **Recommendations**

***In all cases involving alternative care, the UN Guidelines for the Alternative Care of Children should be consulted.***

***Alternative carers should be given information and financial and practical support to enable them to best support the children.***

## **Exonerated parents**

Sometimes, a parent who is sentenced to death will be released rather than executed. This may be because they are found not guilty on appeal, because they are subject to an amnesty or pardon, or because their sentence has been commuted and they have been released (immediately or after serving a period of imprisonment). Dealing with the parent's changed status, whether to 'regular' imprisonment or to release, is usually welcome but also something to which it can be very hard to adjust.

Children of parents sentenced to death may have to deal with one or both of two possible changes: the commutation of a sentence from death to imprisonment, and the release of a parent from prison. Commutation means that both the children and the parent, after the relief that the parent will not be executed, will have to get used to the reality of a (possibly lifelong) prison regime and work out how to build a relationship behind bars. The imprisoned parent and children may have to get used to reduced external support compared to death row (where anti-death penalty campaigns may help them), though visiting and contact rules may be more relaxed outside death row.

As with children of other prisoners, there can be practical and emotional difficulties following release. For some children, this will be the first time the released parent has been able to parent them, and it may not be easy. Contact may have stopped during imprisonment because it was too emotionally difficult

for the child, imprisoned parent or carer to maintain it, meaning the relationship needs to be rebuilt from scratch. Further tensions may arise if the returned parent tries to take on roles within the family that the children are unused to and resist, or which are filled by someone else (such as the other parent's new partner). Practically, the parent may have difficulty finding work and accommodation (stigma around offences carrying the death penalty may make it even harder than for ex-prisoners generally). Issues of institutionalisation, where people become unable to function well in the community after becoming used to the controlled prison environment, are shared with other released prisoners, though may be more severe because of the increased security and isolation in death row compared to prisons generally. However, many of these scenarios are unknown because there is relatively little information on this group, even compared to children of parents sentenced to death in general: more research and more support for this group are both needed.<sup>119</sup>

## Part III

# Issues unique to children of parents sentenced to death

## Notification of execution and final visits

Most jurisdictions inform prisoners (and often their families and lawyers) in advance of the execution date. Families may be allowed one or more visits prior to execution, sometimes with formal or informal relaxation of visiting restrictions to enable longer and more frequent visits, or to permit contact between family members where previously contact had been banned.

Informing the child of the execution date and enabling a final visit – preferably with physical contact – is very important. It acknowledges the irreparable nature of the parting and allows the children and parent a chance to say goodbye. Saying farewell for the last time and then walking away can unsurprisingly be very hard emotionally; it is important therefore to ensure that someone is responsible for informing children (and other family members) in adequate time, and for providing practical information about final visits. As with other visits, children may need to travel considerable distances and so will need time off work or school, and (usually) require adult accompaniment.

By contrast, execution without notification,<sup>120</sup> bringing forward the time or date of execution so that no final visit is possible or planned final visits are unable to take place,<sup>121</sup> or cancellation of the final visit for disciplinary reasons<sup>122</sup> adds to the sense of grievance, and to the unresolved nature of the parting with consequent difficulty in addressing the grief of losing a parent. Execution without notification can also leave the child believing that the parent is still alive. The secrecy surrounding detention on death row and execution that is applied in some States exacerbates the common children's experience of ambiguous loss and unresolved and disenfranchised grief (described in *Execution* section, below).

As well as visits, parents due to be executed can do other things for their children. Some have created documents, recordings or videos for their children,

which can be (for example) a last message, a card and letter/message for birthdays (sometimes several, for different birthdays), or a scrapbook of memories or advice about life. This gives the children something they can watch, listen to or re-read when they want to remind themselves about their parent, or are feeling sad.<sup>123</sup>

### **Recommendation**

***Children and families should be informed of the upcoming execution of a parent and permitted to have one or more final visits.***

***Final visits should not be cancelled for disciplinary reasons or prevented because the date or time of the execution is brought forward.***

## **Execution**

*...on the way up to [the prison] we talked to my father on the phone and he was joking the whole time. It was hard to grasp the fact that an hour and a half from now he's not going to be talking anymore.*

Misty, daughter of executed father<sup>124</sup>

Unlike any other criminal punishment, the death penalty irrevocably severs the parent-child relationship by design.<sup>125</sup> The child faces first the threat, and then the actual implementation, of losing the parent to a violent death carried out by the State apparatus. The fact that the execution is a deliberate and premeditated action, and one authorised by the State, makes execution different from any other death experience for the children.

Executions may take place in public (where anyone can observe), in private (where only select people can observe) or in secret (where the fact and details of the execution are hidden or denied). They may also be carried out using a number of different methods. Little information is available about the differential impact of different types of executions on the children.

In some jurisdictions, minor children do not witness executions, either because regulations forbid it or because they or their parents/carers decide not to attend. For children who are adult by the time of execution (as for other adult

family members), the decision to witness or not is a difficult one. Not attending may lead to a sense of remoteness from the experience and/or of abandoning the parent in their final moments. Attending can mean, aside from the acute distress caused by watching the execution, dealing with the surrounding circumstances. These may include a hostile crowd outside the prison, and celebrations and possibly public statements or press conferences by the victims of the offence (and/or their family). Even the presence of anti-death penalty campaigners outside the prison may be unwanted or overwhelming. If the execution is reported in the media, the children may be exposed (again) to public reporting about the crime, and also negative reporting about the family.<sup>126</sup>

There is one study of children (unrelated to the offender) who witnessed a public hanging. In 2002, approximately 250 local children, aged 7-11, were reported to have watched a public hanging in the Iranian city of Isfahan. They were subsequently identified and invited to participate in a study of post-traumatic stress disorder (PTSD).<sup>127</sup> Two hundred participated (the reduced number was because consent from parents/carers was required, and children who had experienced any other acute traumas during the past year or had had contact with mental health services were excluded). A psychiatrist conducted a clinical psychiatric interview with each child and his/her parents and completed a standard PTSD symptoms checklist<sup>128</sup> in order to diagnose the frequency of symptoms of PTSD. Three months after witnessing the hanging, 104 out of 200 children (52%) exhibited at least one of the symptoms of PTSD, with '88 suffering re-experiences, 24 avoidance and 62 hyperarousal'.<sup>129</sup> Twenty-four (12%) of pupils were 'diagnosed as having chronic PTSD symptoms'.<sup>130</sup> The majority experienced stress: 35% had moderate stress and 40% severe stress, as measured on the Child Post-Traumatic Stress Reaction Index, with an average (mean) stress severity fractionally below the threshold for severe. Prior research has suggested that scoring 'severe' on the scale 'is highly associated with a diagnosis of PTSD'.<sup>131</sup>

Some jurisdictions recognise the traumatic nature of executions. In Texas, USA, the State prepares the family members of the crime victim(s) for witnessing the execution and provides them with a debriefing afterwards. This is done because the State recognises that execution is traumatic, but it recognises no duty to attend to the psychological and emotional needs of the defendant's family members who also witness the execution.<sup>132</sup> It may be that as the State

is causing the parent's death, the child would not wish official support; alternatively, they might welcome both the support and the acknowledgement of the harm that is being caused to them. Either way, it is important that their needs are taken into account and addressed.

Execution severs the parent-child relationship in a way that may cause 'intense fear, helplessness, or horror'<sup>133</sup> in the child, potentially leading to ongoing PTSD or other trauma symptoms in the child that persist into adulthood and throughout life. In severe cases, the child may enter a state of dissociation (withdrawal into the self due to inability to process the event). The burden of grief may see little remission throughout the child's life. The grief the children feel may be both 'disenfranchised' (as society does not socially validate their pain) and 'complicated'. Complicated grief is a condition that keeps the mourner in a chronic, heightened state of mourning: whereas normal grief symptoms gradually start to fade over a few months, those of complicated grief linger or get worse. Adult family members may remain so grief-stricken and traumatised that they are unable to provide adequate care and support for the children – indeed, the child may become the carer of the non-imprisoned parent/carers when the adult is severely affected by the crime/sentence/execution, as well as caring for younger children. Death row families experience 'ambiguous loss' in the traumatising psychological presence, but physical absence, of their imagined-to-be executed or actually executed family member. Their resulting high emotional arousal prevents them from completing a normal grief process.<sup>134</sup>

The killing of one protector/provider figure (the parent) by another potential protector/provider (the State) may cause considerable internal conflict and lead to a complicated relationship with the State and the community. In effect the child is put in the same position as the remaining family members of a murder victim: a loved one was violently killed by a third party, but in this case it was performed and sanctioned by the State. This problem is compounded where the death penalty is applied to non-lethal offences, in violation of international standards, as in that case the children of the executed parent actually suffer a greater loss than the victims of the offence committed by the parent. Children may understand that a parent has done something wrong and therefore needs to be held accountable and to make amends for the harm done by the offence, but be unable to make sense of the fact that the State deliberately plans to kill the parent. They may reject the State's authority, lose a sense of

personal ‘allegiance’ to the State, become unwilling to seek or accept State assistance, and develop hostility towards law enforcement personnel or the specific authorities (judicial, penal, political) that decide on and carry out the death penalty. The situation becomes even more complex if the child believes that the parent is or may be innocent, considers that the offence was justified (such as domestic violence cases where an abused parent kills the abuser) or feels that the necessary culpability to merit the death penalty is lacking (for example, because of mental illness). A further variation may arise where death (rather than imprisonment) is a desirable result for the parent for ideological reasons, for example, in terrorism-related sentences, since the sense of martyrdom becomes more acute when the person is executed. This might encourage others, including the executed parent’s children, to follow the same course opposing the State.<sup>135</sup>

If the execution takes place at a festival time, such as during New Year celebrations, this not only impacts on the children that year, but also means that in future years, when their peers are celebrating the festival season, the children of executed parents are remembering the execution. This causes a particular emotional separation of these children from their peers/community as well as the juxtaposition of a sad event with a happy occasion. While parents die during festivals for other reasons, the stigma and shame associated with the crime and execution means the children are less able to share and to seek support in dealing with this.<sup>136</sup>

— Potential good practice: Mourning rituals —

Mourning rituals can help children adjust to their loss. These may be traditional or religious ceremonies, including but not limited to funerals. They may be modern remembrance ceremonies such as that organised by Murder Victims’ Families for Human Rights, in which families of executed persons meet together and place roses in a vase in memory of their loved ones. Or they may involve a process of ‘talking’ to a dead parent to enable them to say things that they had failed to or been unable to say in life, as well as to give news of successes and achievements.

Sometimes parents die in prison without being executed. They may die from old age, illness, accident, suicide or by being killed. Some of these forms of

death will be expected (such as death after a terminal illness) but others will not. They may or may not provoke similar feelings of antagonism towards the State as happens with executions: if the cause of death is related to the imprisonment (for example, the parent dies of an illness acquired in prison) the children may blame the State for the death. Stigma may be reduced if the parent is not executed, though this may again be affected by the cause of death. However, more research is needed into the whole area of the impact on children of different forms of death.

## Body and effects of the executed

*I began to unpack the box, and there was his wet towel and washcloth that he used right before he was executed. I screamed.*

Aunt of executed man<sup>137</sup>

Following execution, family members may be permitted time with the body immediately after the execution, may be allowed to make their own funeral arrangements (or be consulted about them), and may receive the personal effects that the executed parent had in the prison. All these may assist children and others in the grieving process. State denial of such opportunities may increase the unresolved nature of the grief and aggravate the sense of animosity to the authorities; such feelings may be more extreme if the authorities do not disclose what arrangements have been made or where the body is.<sup>138</sup> There has been at least one case in Uzbekistan of authorities secretly executing a prisoner and then refusing to disclose the burial location;<sup>139</sup> a case in Belarus involving similar secrecy was found by the UN Human Rights Committee to be in violation of Article 7 of the International Covenant on Civil and Political Rights.<sup>140</sup> State practices should be sensitive to the impact they may have on bereaved families, so the return of personal effects to the family should come with advance notice, and the executed parent's possessions should not be left outside the execution unit for the family members to find.<sup>141</sup>

Practices such as in Mauritius, where there is a means-tested funeral grant available, as part of a wider social aid scheme supporting children and families of detainees, should be considered elsewhere.



## Recommendations

***Families should be allowed time with the body immediately after the execution (should they wish it) and to have the body and personal effects of the executed parent returned to them.***

***State financial support for the funeral of an executed parent should be provided.***

## Post-execution

*I think people should understand that the death penalty is going to hurt the kids more than it'll hurt that man you executed. It's going to devastate their life.*

Keith, relative of executed parent<sup>142</sup>

Following the execution, children may face emotional, legal and other problems. If the period prior to execution was marked by an active process of appeals, and/or visiting the imprisoned parent, the sudden lack of time, energy and activity focussed on the prisoner leaves a vacuum that gives more time for intense feelings of loss and grief, and possibly a sense of guilt for having failed to save the parent's life, without the benefits of distraction by the previous activities. Where there is an active community of lawyers and others working with or for people on death row, this drops away after the execution as there is no longer a reason to mobilise, and as the children are no longer visiting the prison there is not even the continuing contact with and support of other death row families. The family is very often left to deal with the post-execution phase on their own.<sup>143</sup>

There may be legal and administrative issues arising, such as the need to obtain a death certificate. This may be issued automatically, or the family may have to register the death. In either case, it is important to consider what the stated cause of death on the death certificate is and whether this has significant effects such as inducing stigma or discrimination (official or social) or altering the status of the children (specifically, are they considered orphans if the other parent is already dead?). In some jurisdictions, the cause of death is listed as 'homicide', but it is unclear whether family members get access to as-

sistance normally given to families of homicide victims. Are children of executed parents legally barred from other benefits or opportunities available to other children in a similar family situation? Children who are orphaned because the executed parent killed the other parent may be at risk of being in a legal and administrative limbo, without an adult guardian to sign documents such as consent forms for medical procedures, and may have problems accessing essential civil documentation to enable residence, marriage, and suchlike.

### **Recommendations**

***Children and families should be able to access support after the execution if they want or need it.***

***States should ensure that children are not negatively affected by administrative procedures and legal statuses related to and following the registration of their parent's death.***

## **Intergenerational impacts**

The long-term and intergenerational impacts of the death penalty on family members is an under-researched area. Research in related fields (survivors of mass violence,<sup>144</sup> natural disasters,<sup>145</sup> torture,<sup>146</sup> war<sup>147</sup> and slavery and systematic racial discrimination<sup>148</sup>) has shown a strong association between a parent's prior victimisation and their children's symptoms of post-traumatic stress disorder. Onset may be delayed by decades, but researchers have found that the identical trauma symptoms of the parents can be displayed in their children, including 'parallel thoughts and behaviours as well as feelings'.<sup>149</sup> Unresolved grief and trauma may make it harder for the children to themselves become good parents in later life.

## **Children living with parents on death row**

Too little is known about the situation of and impact on children who are born to, nursed by and/or spend their early years on death row, and whose mothers are then executed. These children face particular issues because, while there are prohibitions on executing pregnant women<sup>150</sup> (St Kitts and Nevis is

the only country in the world where it is legal to execute a pregnant woman)<sup>151</sup> and mothers of young children,<sup>152</sup> there can be significant uncertainties about what will happen to them and their mothers in the longer term.

In several countries, pregnant women have death sentences commuted (usually) to life imprisonment – Viet Nam commutes death sentences for all women with a child under the age of three.<sup>153</sup> In others, their death sentence is postponed until a period after birth, which may range from 40 days to 3 years, until the child is weaned or for an unspecified time. In some, it is at the court's discretion whether to execute the mother after she has given birth.<sup>154</sup> These children live with the mother and are nursed on death row.

When the mother is executed, any children living with her should be placed with other family members or alternative carers. They should not remain in prison, an unacceptable situation highlighted in Sudan's third and fourth periodic report to the UN Committee on the Rights of the Child, where children remained in prison following the execution of their mothers.<sup>155</sup>

For more on the situation, rights and needs of children living in prison with a parent (not on death row), see QUNO's publications *Collateral Convicts, Orphans of Justice* and *Children Imprisoned by Circumstance*.

## **Recommendations**

***Further research is needed on the impact on children of living with a death row parent.***

***Children should not remain in prison following the execution of a parent.***

## **Foreign nationals**

*Indonesians remain deeply concerned about the fate of Indonesian citizens facing the death penalty abroad. Some 6.5 million Indonesian citizens are employed abroad as domestic workers and labourers. According to the Indonesian Ministry of Foreign Affairs, 233 Indonesians are currently facing the death penalty overseas, in Malaysia, Saudi Arabia, China, Singapore, Brunei and Iran. In response to the public attention to the plight of Indonesian migrant workers facing the death penalty over-*

*seas, the Ministry of Foreign Affairs and the newly formed Task Force on Migrant Worker Protection (Satgas TKI) negotiated clemency on behalf of 110 Indonesian citizens in 2012, according to a statement by the Ministry last year. The Task Force has stated that they were instrumental in the commutation of death sentences for 37 workers in Saudi Arabia, 14 in Malaysia, 11 in China and 1 in Iran.”*

KontraS (The Commission for the Disappeared and Victims of Violence)<sup>156</sup>

Citizens of one country may find themselves facing the death penalty abroad.<sup>157</sup> This can affect nationals of all States, whether they retain or have abolished the death penalty. Affected children may be in the same country as the sentenced parent, may be in the country of origin, or may be in a third country.

Many of the issues that arise will exist for all foreign national prisoners and their children, such as the distance from and difficulty of accessing the parent when the children are in another country; cultural and language differences;<sup>158</sup> lack of familiarity with the criminal justice process; and difficulties finding adequate legal representation. The Vienna Convention on Consular Relations,<sup>159</sup> the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and various International Court of Justice judgements cover the obligation to inform prisoners of their right to consular assistance and to enable them to contact consular officials, but this frequently does not happen (one study of the USA found a failure to inform consulates in 95.1% of cases studied).<sup>160</sup> Even when it does, the assistance provided varies enormously, depending on the State concerned and potentially the specific consulate involved.

— Potential good practice: Government assistance to nationals abroad —

The governments of Mexico, Indonesia and (reportedly) the Philippines have programmes to assist their nationals facing the death penalty abroad. The Mexican Capital Legal Assistance Program provides free trial assistance to Mexicans facing the death penalty in the USA, while in Indonesia the Task Force on Migrant Worker Protection negotiates clemency on behalf of Indonesians sentenced to death in other countries.<sup>161</sup> Some governments have also developed guidance for consular officials on prison systems in general or the death penalty specifically.<sup>162</sup> However, intergovernmental relations or internal politics may mean that a government sometimes chooses not to raise or prioritise cases of its nationals sentenced to death.<sup>163</sup>

More information is needed about whether consular or other government officials provide assistance to the family of the prisoner. If children are with the parent who is arrested, sentenced, or executed, they may need to be repatriated to their home country to be (re)united with other family members or another carer. Children in the country of origin may need assistance (practical, emotional and/or financial) to communicate with and/or visit their imprisoned parent. The family may need information about the judicial process, either for their own understanding or to help advise the parent facing trial. In some countries, no phonecalls are allowed, or the already high cost of phoning prison is compounded by calling internationally, meaning some families cannot afford to call. Allowing a weekly call using internet-based phone and video calls such as Skype, taking account of the time difference from the country of origin, can overcome many of these difficulties.<sup>164</sup> In some countries, families need to provide food for the prisoner, which can be very difficult for foreign national prisoners.

Particularly where government support is lacking or ineffective, NGO assistance and support to families is extremely important. NGO effectiveness is increased when it works in both countries, as it can provide information and facilitate messages between the family and prisoner, as well as describe the prison regulations to the family and raise issues with officials. If the NGO provides legal support to the case, as with legal action charity Reprieve, it can be of even more help to the children and family.

There may be differences for children from a country that does not have the death penalty. They may possibly have more public and community support, but there may also be more shock because they have no experience or expectation of the death penalty. Moreover, governments may not recognise this as an issue – a number of abolitionist States, in their initial responses to the QUNO questionnaire on children of parents sentenced to death, stated that this wasn't an issue for them as they had abolished the death penalty.

### **Recommendations**

***States should prepare, publish and disseminate information to their law enforcement and criminal justice systems about their obligations regarding foreign national prisoners, particularly consular access.***

## **Child victims and witnesses who are also children of offenders**

*If this execution is carried out, we'll have two parents murdered*

Rose Syriani, whose father killed her mother<sup>165</sup>

Children of offenders may also be a victim of the parent's crime(s) and/or a witness to it. This may be particularly common in cases involving the killing of one parent by the other following a period of domestic abuse. It creates issues including the role of the child in the trial, the feelings of the child towards the parent and the suitability of support to the child.

The child's involvement with the trial and sentencing will be complicated when they have a dual (or triple) role as child of the offender and victim and/or witness. If children have to (or choose to) testify during the trial, they may feel guilty about saying things that could lead to the parent's execution. This may be more pronounced if the child believes the offence was justified (such as killing an abusive partner). If a child has given evidence as a witness can they also speak as a victim? If victims of crime (including child victims) are able to make impact statements or similar prior to sentencing, will the child wish to do this?

The best interests of the child may be considered at sentencing where children are victims of the crime as well as children of the offender. The impact of a death sentence on the children's welfare has been used to successfully argue for a non-death sentence in several cases in the USA.<sup>166</sup> One man who killed his wife was not given the death penalty after expert and child testimony showed that keeping the father alive 'was probably in the children's best interests' and that despite the serious trauma the children had suffered because of his actions they still loved their father. Recognising and acknowledging this love was considered important in helping the children move from a desire for 'revenge to reconciliation'.<sup>167</sup>

Particular issues arise where one parent kills the other, as the child may be in the position of losing both parents. This is a very complex situation for the child to work out emotionally and psychologically. Tension among family members may increase, or different parts of their family may split (for example, relatives of the murdered parent breaking contact with relatives of the offending parent). This may deprive the child of loved ones and the support they can provide at a highly distressing time. Ambiguous or conflicted attitudes towards the State by the child may be even more acute than suggested in the *Execution* section above if by executing the parent the State orphans the child. While global data on domestic killings is limited, studies from Europe, Israel, South Africa and the USA suggest that 40-70% of murders of women are linked to intimate partner/family-related violence (and constitute 25% of all homicides in the USA), meaning significant numbers of children will be affected.<sup>168</sup>

Where the children are both victims and children of the offender, victim support services may be ill-equipped to support them. They may see no need to support these children, viewing them as the 'children of an offender' and ignoring the fact that they are also the children of a victim. Even when they do try to help, victim services may not (fully) recognise the conflicted nature of the children's situation, and some suggested approaches might be inappropriate, particularly ones that are highly adversarial towards the offender.<sup>169</sup>

## **Recommendations**

***The impact of potential sentences on children related to both the offender(s) and the victim(s) should be considered, including the possibility of the child being able to make a submission to the court.***

***Victim support services should be sensitised to the existence and needs of children related to both the offender(s) and the victim(s).***



## Conclusion

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Children of parents sentenced to death, it is clear, are deeply affected by their parent's involvement with the criminal justice system. From the point of arrest to decades after the execution or release of a parent, their mental health and wellbeing, living situation, educational attainment and relationships with others can all be impacted, usually negatively. The inherent trauma of knowing that a loved one is due to be executed can be exacerbated by public indifference or hostility, and by authorities which either do not recognise or deliberately refuse to consider the situation of these children.

One thing that is striking in comparison to children of prisoners in general is how much more bleak this situation appears. Among children of prisoners, there are often examples of good practice that help to ameliorate the situation, or children for whom parental imprisonment is less damaging than others. However, with children of parents sentenced to death, the picture is almost uniformly negative. The issues that are shared with other children of prisoners are often more extreme for children of parents sentenced to death: the trial may be about a particularly serious or violent offence; the public may be both more aware of the case (due to high media interest) and more hostile towards the offender and those around them; and the opportunities for contact during imprisonment more limited and less satisfactory. The additional issues that they alone experience – most obviously the execution and the times before and after it – may be among the most traumatic that children can experience: the knowledge that, barring reversals, a parent will be deliberately killed, and then dealing with the consequences of that. Most children of prisoners wait for their parent to come home; these children wait for their parent never to come home again.

Some of these negative impacts occur because of a lack of awareness about the children. Some of them are a deliberate or unavoidable consequence of using capital punishment. But in neither case are the child's rights a key consideration. Their rights to (among others) a relationship with both parents, the highest attainable standard of mental health, education, and to have their best interests be a primary consideration in all matters concerning them, are all af-

affected by a parental death sentence and execution. These children have committed no crime: they should not suffer because of the crimes of others.

This issue requires much greater attention than it has so far received, both in order to understand more fully the impact that sentencing a parent to death has on children, and to ensure their rights, needs and welfare are met so far as is possible in such a situation. More information is needed about good State, professional and NGO practice, as well as the situation of particularly marginalised children (such as those with a parent sentenced/executed in another country). Thus equipped, it may become easier to see which policies and practices designed to support children of prisoners in general (good practice on maintaining the parent-child relationship, taking the best interests of the child into account when sentencing) are relevant to children of parents sentenced to death.

However, it is both better and often easier to prevent harm than to remedy it later. Even where the death penalty has been abolished, there may be children who have been affected and need support, and where abolition is not retroactive, parents still on death row. Avoiding both the imposition and the execution of the death penalty would mean that these children would not live with the threat or reality of a parent dying at the hands of the State, would not experience the major impacts on their health and wellbeing that such a situation entails, and would not have to live their lives dealing with the consequences of an offence they have not committed. Quakers oppose the death penalty in all circumstances, but the impacts on children of offenders by themselves make a powerful case for abolition.

# Endnotes

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- 1 Expert workshop participants from North America, Asia and Africa, February-March 2013.
- 2 Expert workshop participants from Asia, March 2013.
- 3 Lack of birth registration in some countries prevents accurate population statistics being gathered.
- 4 BBC 'Prison Dads' programme, first broadcast 27 March 2013. Details at <http://www.bbc.co.uk/programmes/p014q47t> (accessed 30 April 2013).
- 5 Death Penalty Information Center website: <http://www.deathpenaltyinfo.org/time-death-row#chara> (accessed 6 May 2013).
- 6 Katherine Norgard, in Rachel King (2005) *Capital Consequences: The Families of the Condemned Tell Their Stories* (New York: Rutgers University Press), p279.
- 7 Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford); Sandra Jones and Elizabeth Beck (2006-2007) 'Disenfranchised grief and nonfinite loss as experienced by the families of death row inmates' in *Omega: Westport* Vol. 54 No. 4, pp281-99; Rachel King (2006) 'The Impact of Capital Punishment on Families of Defendants and Murder Victims' Families' in *Judicature* Vol. 89 No. 5, pp292-296; Rachel King (2005) *Capital Consequences: The Families of the Condemned Tell Their Stories* (New Brunswick: Rutgers University Press); Walter Long (2011) 'Trauma Therapy for Death Row Families' in *Journal of Trauma and Dissociation* Vol. 12 No. 5, pp482-94; Susan Sharp (2005) *Hidden Victims: The Effects of the Death Penalty on the Families of the Accused* (New Brunswick: Rutgers University Press).
- 8 Some experts at the QUNO-organised workshop felt that children with a parent sentenced to death are more withdrawn and scared than other children of prisoners.
- 9 Expert workshop participants from Africa, Asia, Europe and North America, February-March 2013.
- 10 Expert workshop participants, March 2013.
- 11 Expert workshop participants from Europe and North America, March 2013.
- 12 Expert workshop participants from Asia and North America, March 2013.
- 13 Expert workshop participants from Africa and North America, March 2013.
- 14 Expert workshop participant from Asia, March 2013.
- 15 Denise Johnston (1995) 'Effects of Parental Incarceration' in Katherine Gable and Denise Johnston (eds.) *Children of Incarcerated Parents* (New York: Lexington Books), referenced in Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford), pp98-99.
- 16 Expert workshop participants from Asia and North America, March 2013.
- 17 Expert workshop participants from Africa, Asia and North America, March 2013.
- 18 Expert workshop participants from Africa, Asia and North America, March 2013.

- 19 Referring to the person sentenced to death, the European Court of Human Rights has stated: “the foreknowledge of death at the hands of the State must inevitably give rise to intense psychological suffering.” ECHR, *Al-Saadoon and Mufdhi v. UK*, Application No.61498/08, March 2, 2010, para.115.
- 20 Expert workshop participants from North America, February-March 2013.
- 21 Expert workshop participants from Asia and North America, March 2013.
- 22 Expert workshop participants from Asia and North America, March 2013.
- 23 Expert workshop participants from Asia and North America, March 2013.
- 24 Expert workshop participant from North America, March 2013.
- 25 Findings of the pan-European COPING Project on the mental health of children of prisoners, summarised at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013).
- 26 Expert workshop participant from North America, March 2013.
- 27 Expert workshop participants from Africa and Asia, March 2013.
- 28 The value of having contact with other children in the same situation has been found in multiple other studies and anecdotal accounts, including the EU-funded COPING Project into the mental health of children of prisoners (summarised at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013)).
- 29 Expert workshop participant from Africa, March 2013.
- 30 Response to QUNO questionnaire.
- 31 Expert workshop participant from North America, February 2013.
- 32 Expert workshop participants from Africa and North America, March 2013.
- 33 For example, Anxiety Online in Australia: <http://www.anxietyonline.org.au/> (accessed 6 May 2013) and Interapy in the Netherlands: <http://www.interapy.nl/> (accessed 6 May 2013).
- 34 See, for example, the findings of the pan-European COPING Project on the mental health of children of prisoners, available at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013). More details on COPING available at <http://www.coping-project.eu/> (accessed 29 April 2013).
- 35 Expert workshop participants from Asia and North America, February 2013.
- 36 Expert workshop participants from Asia, February 2013.
- 37 Expert workshop participant from Asia, February 2013.
- 38 Expert workshop participants from Asia, February 2013.
- 39 Expert workshop participants from Africa and Asia, February 2013. For more on these issues, see *Carers and alternative care* and *Child victims and witnesses who are also children of offenders* sections.
- 40 Expert workshop participants from Africa and North America, February 2013.
- 41 Expert workshop participants from Asia and the Caribbean, February 2013.
- 42 Further discussion of the role of the media in death penalty cases is available at <http://www.capitalpunishmentincontext.org/issues/media> (accessed 3 May 2013).
- 43 Expert workshop participants from North America, February-March 2013.

- 44 Expert workshop participant from the Caribbean, February 2013.
- 45 Findings of the pan-European COPING Project on the mental health of children of prisoners, summary available at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013).
- 46 Expert workshop participant from Asia, February 2013.
- 47 Expert workshop participant from Asia, February 2013.
- 48 Expert workshop participant from North America, February 2013.
- 49 Decision 17: 'Pre-trial detention', of the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, p157 onwards. Available via <http://tinyurl.com/Congress8> (accessed 6 May 2013).
- 50 Where this does change following conviction, it is important that children are prepared for the different conditions.
- 51 Laurel Townhead (2007) *Pre-trial Detention of Women and its impact on their children* (Geneva; QUNO), especially p23.
- 52 Expert workshop participant from North America, February 2013.
- 53 Expert workshop participants from North America, February 2013.
- 54 Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford), chapter 10.
- 55 Open Society Justice Initiative and the Paralegal Advisory Service Institute (2010) *Statement Submitted by the Open Society Justice Initiative and the Paralegal Advisory Service Institute for Consideration by the United Nations Human Rights Council at its Ninth Session, on the occasion of its Universal Periodic Review of the Republic of Malawi*, available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MW/JS2\\_OSJI\\_Joint%20submission2.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MW/JS2_OSJI_Joint%20submission2.pdf) (accessed 3 May 2013).
- 56 For more on pre-trial detention in general, see Open Society Justice Initiative (2011) *The Socioeconomic Impact of Pretrial Detention*, available at: <http://www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention> (accessed 3 May 2013).
- 57 Expert workshop participant from the Caribbean, February 2013.
- 58 Expert workshop participants from Asia, the Caribbean and North America, February 2013.
- 59 Expert workshop participant from Asia, February 2013.
- 60 Expert workshop participant from North America, March 2013.
- 61 Expert workshop participants from Asia and North America, February 2013.
- 62 Expert workshop participants from North America, February 2013.
- 63 Expert workshop participant from Asia, February-March 2013.
- 64 Convention on the Rights of the Child, Article 37(a) states:  
*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.*

Additional Protocol I to the Geneva Conventions 1977, Article 77(5) states: *The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.*

- 65 International Covenant on Civil and Political Rights, Article 6(5) states: *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

Additional Protocol I to the Geneva Conventions 1977, Article 76(3) states: *To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.*

Additional Protocol II to the Geneva Conventions 1977, Article 6(4) states: *The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.*

- 66 Internationally, Safeguard 3 of the 1984 ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty prohibit 'persons who have become insane' from receiving a death sentence (later strengthened in operative paragraph 4 of ECOSOC Resolution 1989/64). Resolution 2005/59 of the Commission on Human Rights urged Member States not to impose capital punishment on or to execute 'a person suffering from any mental or intellectual disabilities' (para. 7 (c)). However, the main difficulty with these provisions lies in the implementation, as problems regarding the definition of the different concepts (insanity, mental illness, limited mental competence or 'any form of mental disorder') and the degree of subjectivity involved at the stage of diagnosis remain in all countries. Information from Penal Reform International, May 2013.
- 67 African Charter on the Rights and Welfare of the Child Article 30(e).
- 68 Expert workshop participant from Europe, March 2013, and International Committee of the Red Cross website: [http://www.icrc.org/customary-ihl/eng/docs/v2\\_cha\\_chapter39\\_rule134\\_sectionc](http://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter39_rule134_sectionc) (accessed 5 May 2013).
- 69 Expert workshop participant from Africa, February 2013.
- 70 For more on remote testimony, see Alison Cunningham and Pamela Hurley (2007) *Testimony Outside the Courtroom*, available at: [http://www.lfcc.on.ca/2\\_OutsideCourtroom.pdf](http://www.lfcc.on.ca/2_OutsideCourtroom.pdf) (accessed 3 May 2013).
- 71 Expert workshop participant from North America, March 2013.
- 72 Information received from Penal Reform International, April 2013.
- 73 Expert workshop participants from North America and Africa, February-March 2013.
- 74 One reported consequence of this is that judges have imposed extremely long prison sentences, of 60-100 years, where previously they would have given the death penalty. Information from expert workshop participant from Africa, February 2013.
- 75 Expert workshop participants from North America, February 2013. See also Ryan Byrd (2000) 'A "last hug" before execution: The case in favour of contact visitation for death row inmates in Texas' in *Scholar: St. Mary's Law Review on Minority Issues* Vol. 2, pp249-288.

- 76 Sharon Shalev (2011) 'Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis' in *Journal of Forensic Psychology Practice* Vol. 11, pp151-183; Bruce Arrigo and Jennifer Bullock (2008) 'The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change' in *International Journal of Offender Therapy and Comparative Criminology* Vol. 52 No. 6, pp622-640.
- 77 Penal Reform International, personal correspondence.
- 78 Rules around frequency of visits and whether contact is allowed may change in the period directly before the execution. This is dealt with in *Notification of execution and final visits*.
- 79 Expert workshop participants from Africa, Asia, Europe and North America, February 2013.
- 80 Nigel Cantwell, Jennifer Davidson, Susan Elsley, Ian Milligan and Neil Quinn (2012) *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'* (UK: Centre for Excellence for Looked After Children in Scotland), p22.
- 81 Expert workshop participants from Africa and Asia, March 2013.
- 82 Expert workshop participants from Africa, Asia and North America, March 2013.
- 83 This is also a major issue for children of prisoners more generally.
- 84 Expert workshop participants from Africa, Asia and North America, March 2013.
- 85 I/A Court H. R., Case of *Raxcacó Reyes v. Guatemala*. Judgement of September 15, 2005. Series C No. 133, para. 95. 183, referenced in *The Death Penalty in the InterAmerican Human Rights System: From Restrictions to Abolition*, OEA/Ser.L/V/II. Doc.68 31 December 2011, p176.
- 86 Findings of the pan-European COPING Project on the mental health of children of prisoners, summary available at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013).
- 87 Expert workshop participants from Africa, Asia, Europe and North America, March 2013.
- 88 Expert workshop participant from North America, March 2013.
- 89 Quote courtesy of Murder Victims' Families for Human Rights. Not to be reproduced without permission.
- 90 Expert workshop participant from Africa, March 2013.
- 91 Expert workshop participants from Asia, Europe and North America, March 2013. There is at least one attempt in the USA to develop a scale of death row stigma.
- 92 This attitude of prosecutors or the criminal justice system more widely may also impede 'any possibility of humane communication between the offender's and victim's family members.' From Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford), p181.
- 93 Expert workshop participant from Asia, March 2013.
- 94 Expert workshop participant from Africa, February 2013.

- 95 Expert workshop participants from Asia, Europe and North America, March 2013.
- 96 Expert workshop participants from North America, March 2013.
- 97 Findings of the pan-European COPING Project on the mental health of children of prisoners, summary available at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013).
- 98 Expert workshop participant from North America, March 2013.
- 99 Expert workshop participant from Asia, March 2013. A report about teacher training materials, written by Sarah Roberts and produced by Families Outside and the Winston Churchill Memorial Trust, is available at: <http://www.familiesoutside.org.uk/content/uploads/2012/09/The-Role-of-Schools-in-Supporting-Families-Affected-by-Imprisonment-FINAL.pdf> (accessed 4 May 2013).
- 100 Expert workshop participants from Asia, February-March 2013.
- 101 See for example the Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on his Mission to the USA (UN Doc. E/CN.4/1998/68/Add.3), where he concludes that ‘race, ethnic origin, and economic status appear to be key determinants of who will, and who will not, receive a death sentence’.
- 102 Expert workshop participant from North America, March 2013.
- 103 Expert workshop participants from North America, March 2013.
- 104 The Texas After Violence Project provides examples of non-sensational testimonies: <http://www.texasafterviolence.org/> (accessed 27 March 2013).
- 105 Expert workshop participants from Asia, the Caribbean, Europe and North America, March 2013.
- 106 Expert workshop participant from North America, March 2013.
- 107 Findings of the pan-European COPING Project on the mental health of children of prisoners, summary available at <http://www.eurochips.org/documents/1363703427.pdf> (accessed 29 April 2013).
- 108 Expert workshop participants from Africa, Asia and North America, March 2013.
- 109 Expert workshop participants from Africa and North America, March 2013.
- 110 Expert workshop participants from Africa, Asia and North America, March 2013.
- 111 Expert workshop participants from North America, March 2013.
- 112 Expert workshop participants from Africa and Asia, March 2013.
- 113 The Guidelines are available in English at <http://www.sos-childrensvillages.org/About-us/Publications/Documents/UN%20Guidelines/UN-Guidelines-EN.pdf> and other languages are available at <http://www.sos-childrensvillages.org/what-we-do/child-care/quality-in-care/advocating-quality-care/pages/unguidelinesonthealternativecareofchildren.aspx> (accessed 1 May 2013).
- 114 Expert workshop participant from Asia, March 2013.
- 115 Article 20(1) states:  
*A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*



- 116 Expert workshop participants from Africa and Asia, March 2013.
- 117 Expert workshop participants from Africa and Asia, March 2013.
- 118 Expert workshop participant from Africa, March 2013.
- 119 Expert workshop participants from Africa and North America, March 2013. One recent book exploring the situation of exonerated prisoners includes a chapter on families and rebuilding relationships: Sandra Westervelt and Kimberley Cook (2012) *Life after death row: exonerees' search for community and identity* (Rutgers University Press).
- 120 According to Amnesty International “the policy of the Japanese government [is] to carry out executions in secret and without prior notice to the family of the convicted person”, 27 August 2012, AI Index: ACT 50/008/2012, ‘The Question of the Death Penalty: Written statement to the 21st session of the UN Human Rights Council (10-28 September 2012)’. According to Amnesty International’s *Death Sentences and Executions in 2012*, in Taiwan family members of the six persons executed on 21 December 2012 were not informed before the executions were carried out: ‘They only found out when invited to collect the body from the mortuary’ (p25). In Iran, lawyers are not always informed in advance of their clients’ execution, despite the legal requirement of 48 hours’ notice, and families are not always given an opportunity for a final visit, or to receive the body and effects of their relative after execution. In many cases, the only sign that an execution is imminent is when death row prisoners are taken from their cells and transferred to places like Tehran’s Evin Prison (this would happen 48 hours before the scheduled execution date). The families of the convicts are often told only a day before the execution, when they are called to the prison for a final visit’ (p34).
- 121 This has been reported to have happened in Iran.
- 122 This has been reported to have happened in the USA.
- 123 Expert workshop participants from North America, March 2013.
- 124 Quote courtesy of Murder Victims’ Families for Human Rights. Not to be reproduced without permission.
- 125 Walter C. Long, OHCHR submission, March 2013.
- 126 Expert workshop participants from Asia and North America, March 2013.
- 127 A. Attari, S. Dashty and M. Mahmoodi (2006) ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’ in *La Revue de Santé de la Méditerranée orientale* Vol. 12, No 1/2, pp72-80.
- 128 The frequency of PTSD symptoms among children were defined according to the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM–IV) scale. Severity of symptoms were defined according to the Child Post-Traumatic Stress Reaction Index.
- 129 A. Attari, S. Dashty and M. Mahmoodi (2006) ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’ in *La Revue de Santé de la Méditerranée orientale* Vol. 12, No 1/2, p72.
- 130 A. Attari, S. Dashty and M. Mahmoodi (2006) ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’ in *La Revue de Santé de la Méditerranée orientale* Vol. 12, No 1/2, p75.
- 131 A. Attari, S. Dashty and M. Mahmoodi (2006) ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’ in *La*

- 132 *Revue de Santé de la Méditerranée orientale* Vol. 12, No 1/2, pp74, 77.
- 133 Walter C. Long, OHCHR submission, March 2013.
- 134 Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, para. 309.81, referred to in Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford), p125.
- 135 Walter Long (2011) 'Trauma therapy for death row families' in *Journal of Trauma and Dissociation* Vol. 12, pp482-494 (pp. 484-485, 487-488). Pauline Boss coined the term 'ambiguous loss': see Pauline Boss (2006) *Loss, trauma, and resilience: Therapeutic work with ambiguous loss* (New York, NY: Norton).
- 136 Expert workshop participants from Asia and North America, March 2013.
- 137 Expert workshop participants from Asia and North America, March 2013.
- 138 Elizabeth Beck, Sarah Britto and Arlene Andrews (2007) *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP; Oxford), p86.
- 139 For example, Article 175, Part 5 of the Criminal Enforcement Code of Belarus states: 'Bodies are not handed over for burial and the place of burial is not communicated.' In Saudi Arabia 'The bodies are transported to be buried in unmarked graves' (Amnesty International (2013) *Death sentences and executions in 2012*, p37). In Botswana 'The authorities did not return his body to the family, nor did they reveal where he was buried' (Amnesty International (2013) *Death sentences and executions in 2012*, p41). In Gambia 'The executions were carried out in secret and neither the individuals nor their families or lawyers were informed in advance. The family members did not receive official confirmation of their relatives' fate until 27 August, three days after the executions were first reported. The authorities did not return the bodies to the families and gave no information about where they were buried' (Amnesty International (2013) *Death sentences and executions in 2012*, p42).
- 140 Human Rights Office, City of Nuremberg website: [http://www.nuernberg.de/internet/menschenrechte\\_e/chikunova\\_e.html](http://www.nuernberg.de/internet/menschenrechte_e/chikunova_e.html) (accessed 1 May 2013).
- 141 *Banderenko v Belarus* – UN Human Rights Committee, Communication 886/1999, 3 April 2003, CCPR/C/77/D/886/1999.
- 142 In Texas, USA, prison staff leave the possessions from the executed person's cell in a mesh bag on the roadside outside the execution unit and families must go to find and collect them. Walter C. Long OHCHR submission, March 2013.
- 143 Quote courtesy of Murder Victims' Families for Human Rights. Not to be reproduced without permission.
- 144 Expert workshop participants from North America, March 2013.
- 145 Katharine Baker and Julia Gippenreiter (1998) 'Stalin's purge and its impact on Russian families' in Yael Danieli (ed.) *International handbook of multigenerational legacies of trauma* (New York: Plenum Press), pp403-434; J. David Kinzie, J. Boehnlein and William H. Sack (1998) 'The effects of massive trauma on Cambodian parents and children' in Yael Danieli (ed.) *International handbook of multigenerational legacies of trauma* (New York: Plenum Press), pp211-221.
- 146 Rachael D. Goodman and Cirecie West-Olatunji (2008) 'Transgenerational trauma and resilience: improving mental health counseling for survivors of

- Hurricane Katrina' in *Journal of mental health counseling* Vol. 30 No. 2, pp121-136.
- 146 Atia Daud, Erling Skoglund and Per-Anders Rydelius (2005) 'Children in families of torture victims: transgenerational transmission of parents' traumatic experiences to their children' in *International journal of social welfare* Vol. 14 Issue 1, pp23-32.
- 147 Michelle Ancharoff, James Munroe and Lisa Fisher (1998) 'The legacy of combat trauma: clinical implications of intergenerational transmission' in Yael Danieli (ed.) *International handbook of multigenerational legacies of trauma* (New York: Plenum Press), pp257-276.
- 148 William Cross Jr (1998) 'Black psychological functioning and the legacy of slavery' in Yael Danieli (ed.) *International handbook of multigenerational legacies of trauma* (New York: Plenum Press), pp387-400; Matthew V. Johnson Sr (2005) 'The middle passage, trauma and the tragic re-imagination of African American theology' in *Pastoral psychology* Vol. 53 No. 6, pp541-561; Denyse Hicks-Ray (2004) *The pain didn't start here: Trauma and violence in the African American community* (Atlanta, GA: TSA Communications).
- 149 Atia Daud, Erling Skoglund and Per-Anders Rydelius (2005) 'Children in families of torture victims: transgenerational transmission of parents' traumatic experiences to their children' in *International journal of social welfare* Vol. 14 Issue 1, pp23-32.
- 150 International Covenant on Civil and Political Rights, Art. 6(5):  
*Sentence of death ... shall not be carried out on pregnant women*  
 American Convention on Human Rights, Art. 4(5):  
*Capital punishment shall not be ... applied to pregnant women*  
 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Art. 4(2)(g):  
*States Parties shall take appropriate and effective measures to ... ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women.*
- 151 International death penalty database <http://www.deathpenaltyworldwide.org/women.cfm>, information correct as of 25 January 2012 (accessed 24 April 2013).
- 152 African Charter on the Rights and Welfare of the Child, Art. 30(e):  
*States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular ... ensure that a death sentence shall not be imposed on such mothers.*  
 Arab Charter on Human Rights, Art. 12:  
*The death penalty shall not be inflicted on ... a nursing mother within two years from the date on which she gave birth.*
- 153 As of 25 January 2012, these States included the Bahamas, Botswana, Ghana, India, Kenya, Kuwait, Laos, Malawi, Malaysia, Singapore, Sri Lanka, Uganda and Zambia. International death penalty database <http://www.deathpenaltyworldwide.org/women.cfm>, information correct as of 25 January 2012 (accessed 24 April 2013).
- 154 Individual country policies include: 40 days in Morocco, 2 months in Egypt, 3 months in Bahrain, 3 years in Thailand and the Central African Republic, until they are weaned in Mali and Iran, and 'for some time' in Taiwan. Burkina

- Faso, Chad, Japan, Lebanon and the Republic of Korea are among those whose period of delay is unspecified. Bangladesh, Eritrea, Ethiopia, Iraq, Myanmar, and Pakistan are countries where courts have discretion over post-birth execution. International death penalty database <http://www.deathpenaltyworldwide.org/women.cfm>, information correct as of 25 January 2012 (accessed 24 April 2013).
- 155 CRC Concluding Observations Sudan CRC/C/SDN/CO/3-4, paras. 62-63.
- 156 KontraS, submission to the UN Office of the High Commissioner for Human Rights, March 2013.
- 157 'In 2012, 27 of those executed in Saudi Arabia were foreign nationals. Over the past five years, an average of three out of every 10 people executed were foreign nationals – mainly migrant workers from developing countries in Africa and Asia' (Amnesty International (2013) *Death sentences and executions in 2012*, p38). In the United Arab Emirates, 'Over half of the [death] sentences were given to foreign nationals' (Amnesty International (2013) *Death sentences and executions in 2012*, p39).
- 158 Amnesty International reports that where foreign nationals were accused of a capital crime, such as in Saudi Arabia, interpreters were often not present during interrogations or trials or their assistance was inadequate (Amnesty International (2013) *Death sentences and executions in 2012*, p30).
- 159 Vienna Convention on Consular Relations, Article 36(1)(b).
- 160 Reprieve UK (2012) *Honored in the Breach: The United States' failure to observe its legal obligations under the Vienna Convention on Consular Relations (VCCR) in capital cases*.
- 161 KontraS, submission to the UN Office of the High Commissioner for Human Rights, March 2013.
- 162 For example, the Norwegian Ministry of Foreign Affairs has guidelines for the Norwegian Foreign Service *Promoting abolition of the death penalty* (2012), which include specific reference to the situation of Norwegian citizens or people entitled to receive consular assistance from Norway; the NGO Reprieve is challenging EU Member States to provide consular legal assistance to their nationals facing the death penalty. A valuable addition in both cases could be to highlight the importance of providing consular assistance to the children of such persons, and of liaising with domestic ministries/services to assist such children in the home country.
- 163 After the present government assumed power, Canada reversed its previously longstanding advocacy for commutation of the death sentence of a Canadian citizen in the US state of Montana. This decision, however, was overturned by a Canadian federal court on the ground that it was unfair and the court ordered that 'the Government must continue to support clemency for Canadians, including the applicant, facing execution in a foreign state'. *Smith v. Canada (Attorney General)*, 2009 FC 228 (CanLII), [2010] 1 FCR 3, decision available at: <http://www.canlii.org/en/ca/fct/doc/2009/2009fc228/2009fc228.html> (accessed 5 May 2013).
- 164 Expert workshop participant from Asia, March 2013.
- 165 Susannah Sheffer, Renny Cushing and Murder Victims' Families for Human Rights (2006) *Creating More Victims: How Executions Hurt the Families Left Behind* (Cambridge, Massachusetts), p10.

- 166 Cases include: *State v. Allen*, 360 NC 297, 304, where the jury found as a mitigating factor that the defendant's death would have a detrimental impact on his mother, father, daughter and other family members; and *US v Richard Jackson*, before J. Thornburg, where the judge allowed as a mitigating factor the fact that 'the execution of Richard Jackson would have a severe impact on his mother and family and his two young children'. However, there are a number of US States that do not allow family members of death row inmates to give impact testimony (Walter C. Long, OHCHR submission, March 2013).
- 167 *State of North Carolina v. Dexter Tremaine McRae*, Cumberland County No. 06 CRS 064034.
- 168 <http://www.un.org/events/tenstories/06/story.asp?storyID=1800> (accessed 5 May 2013).
- 169 Expert workshop participant from North America, May 2013.
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## **Lightening the Load of the Parental Death Penalty on Children**

What happens to children when a parent is sentenced to death or executed? In this paper, which draws on research and expertise from around the world, the practical and emotional impacts are explored, from the point of arrest to beyond the execution or exoneration.



Quaker United Nations Office