

# **Children of parents sentenced to death or executed**

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DEVELOPMENTS, GOOD PRACTICES AND NEXT STEPS



**PERSPECTIVES FROM A SIDE EVENT  
AT THE UN HUMAN RIGHTS COUNCIL**



Quaker United Nations Office

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## SPEAKERS

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**Marta Santos Pais**, Special Representative of the UN Secretary General on Violence against Children



**Ann Kristin Vervik**, Child Protection Expert, Office of the Special Representative of UN Secretary General on Violence against Children



**Euclides del Moral Arbona**, Deputy Director General of Consular Protection, Ministry of Foreign Affairs of Mexico



**Akira Maeda**, Professor of Law, Tokyo Zokei University, Japan



**Zaved Mahmood**, Human Rights Officer, Office of the High Commissioner for Human Rights



Chair: **Rachel Brett**, Representative (Human Rights and Refugees), Quaker United Nations Office, Geneva



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## INTRODUCTION

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On 11 March 2014, during the 25<sup>th</sup> session of the UN Human Rights Council (Palais des Nations, Geneva), the Quaker United Nations Office (QUNO) together with Belgium, Mexico, Montenegro and Norway, organised a side event on ‘Children of Parents Sentenced to the Death Penalty or Executed: Developments, Good Practices and Next Steps’.

The side event was an opportunity to:

- reflect on the link between violence against children and the sentencing of a parent to death
- hear how the (specific) application of the death penalty in Japan inflicts additional suffering on the children of death row prisoners
- learn about the Mexican programme for nationals facing the death penalty in the USA (Mexican Capital Legal Assistance Program - MCLAP) and the assistance provided by Mexico to the children and families of nationals on death row in the USA
- discuss the OHCHR report summarizing the Human Rights Council Panel on this issue, and have an in-depth discussion about some of the recommendations made during that event, including the convening of a UN expert seminar on the applicable human rights framework
- get an overview of the developments in the Committee on the Rights of the Child, the Universal Periodic Review process and the UN General Assembly

Among the other issues that came up were:

- the High Commissioner's recommendation that moratoria include sentencing to death as well as executions
- the recommendation of the Committee on the Rights of the Child that the best interests of the child be taken into account when sentencing a parent, including a possible death sentence
- the need for States to give effect to the Human Rights Council's resolution call that children of parents on death row be given access to their parents and to information regarding their parents' status
- the need to immediately end any form of secrecy surrounding the use of the death penalty, and ensure domestic legislation complies with international standards on transparency
- the link between the rights of children and families to know about the fate and burial site of executed persons and transitional justice processes
- the pivotal role that can be played by National Human Rights Institutions

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This publication compiles the presentations made by the panellists and offers a summary of the discussion that followed the presentations.

## PARENTAL DEATH SENTENCE AS VIOLENCE AGAINST CHILDREN

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**Marta Santos Pais, Special Representative of the UN Secretary General on Violence against Children (Video message)**

I regret that I cannot be with you in person at this very important event, but I am very pleased to join you through this message.

I would like to thank the Human Rights Council and the organizers of this event for giving attention to the situation of children of parents sentenced to the death penalty or executed. These children have long been invisible and neglected. It is time to safeguard their rights and to bring the child perspective into these reflections.

The loss of a parent is traumatic and irreversible but, unlike a natural death, when it is officially performed by the authorities of a country, it becomes particularly confusing and frightening for a child. Children find it hard to explain their situation, and are increasingly tempted to deny it and hide their feelings.

Children feel invaded by anger and a deep sense of uncertainty. Traumatized and with low self-esteem, they have constant nightmares or loss of sleep, and eating disorders; they lose concentration and interest in school, as well as interest in playing. Post-traumatic stress disorder, self-harm and aggressive behaviour often go hand in hand. Overall, children endure this experience in deep loneliness and hopelessness.

The serious stigma associated with persons sentenced to death often makes it difficult to find alternative caregivers for the child,

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which further exacerbates the pain and, in turn, increases the risk of becoming homeless, victim of violence and manipulated into a criminal path.

Consultations held with children in a number of countries revealed that when a parent was imprisoned, children benefited from little or no assistance from care and protection institutions. Children felt ignored when decisions about their parents were taken; they had no one to talk to when their parent was sent to prison; and there were no services to support them, to give them information or address their concerns.

For these children, visiting a parent in prison was frightening; strip searches and shouting staff made them feel terrified and anxious, as if they were placed in jail too. Often times, they had to travel long distances to come to the prison but the visit was quick and short. Children would like to have more time with their parents and to meet in a supportive and child-friendly environment, with correctional staff treating them with respect. Children need someone they trust to listen to how they are feeling, someone who can explain what is happening and help them feel safe and reassured.

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Daunting as this reality may be, it is not inevitable. And we can start with three simple steps.

Firstly, the sentencing of a parent to the death penalty or execution compromises the enjoyment of a wide spectrum of children's rights; but it can be prevented, as we are reminded by the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), adopted already 25 years ago. Let us use this symbolic anniversary to widen the ratification and implementation of this treaty.

Secondly, we need more research on the situation of children of parents facing the death penalty. But we have enough evidence to recognize the urgency of ensuring a protective environment for these children; preventing their discrimination and stigma, and providing them with the services and the recovery and reintegration measures they require.



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It is equally important to recall that still today there are children being subjected to the death penalty. This is contrary to the Convention on the Rights of the Child which bans the imposition of capital punishment for offences committed by persons below 18 years of age, regardless of their age at the time of trial, sentencing or of the execution of the sanction. It is imperative to ensure that this fundamental provision is respected and duly implemented in all countries of the world.

I look forward to continuing to join hands with you all in this important process. Together, we can promote a paradigm shift in the way we secure safe and peaceful societies, and safeguard the rights of children everywhere and at all times.

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## **ASSISTANCE TO NATIONALS FACING DEATH SENTENCES ABROAD, THEIR CHILDREN AND OTHER FAMILY MEMBERS**

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**Euclides del Moral Arbona, Deputy Director General of Consular Protection, Ministry of Foreign Affairs of Mexico**

### **Mexican Capital Legal Assistance Program (MCLAP)**

Mexico has had a long-standing abolitionist position on the Death Penalty. Before 2005, this was a *de facto* stance; since then, Mexico has abolished such punishment from its entire legal framework. This firm policy is reflected in its consular protection programs. In 2000, the Ministry of Foreign Affairs (MFA), created a legal support program for Mexicans facing the death penalty in the United States of America, known as the Mexican Capital Legal Assistance Program or MCLAP. The aim was to raise the quality of legal defense from the time of

arrest of the suspect to the processes of post-conviction, both at the state and federal level.

### Program objectives

- **Preventive.** Prevent Mexican capital defendants from receiving the death penalty by the early intervention of the professional and technical-legal assistance that MCLAP provides to both defense lawyers and our consular network in the USA.
- **Corrective.** Avoid the execution of Mexican nationals already sentenced to death, or secure the annulment of their sentences by obtaining the review and reconsideration of their legal proceedings through technical and legal assistance to defense counsels and Mexican consulates so they can have legal arguments in International Law, American criminal law, as well as mitigating elements in favor of the convicted.

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### Program activities

Among other actions, the program is responsible for:

- providing assistance and advice in the preparation of motions and legal documents within the various procedural stages or even present them in some cases directly to the courts or authorities.
- analyzing the official records of the proceedings in order to assert legal remedies in cases where irregularities are identified, during or after the trial, such as racial discrimination, lack of consular notification, notoriously ineffective legal representation, or mental retardation and other disabilities.
- supporting the work of legal defense of public defenders or court appointed lawyers by obtaining mitigating evidence related to family, work and medical history of the accused. This includes the incorporation of researchers and specialists to conduct investigations in the USA and Mexico.

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- locating and incorporating specialists and experts to program tasks, preferably bilingual, to develop opinions and surrender mitigating testimony to the courts in support of the defense of the accused in diverse areas such as psychology, psychiatry, neurology, social work, Mexican socio-cultural environment, etc.

### Program achievements

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Since its inception in 2000 to February 2014, MCLAP studied 1,535 cases; of which 534 did not qualify (the suspect had dual nationality, was not Mexican, or received a reclassification of charges). In all cases the crime was murder in the first degree.

Of the 1,001 cases in which MCLAP has intervened, it was possible to prevent or reverse the imposition of the death penalty in 878 cases (almost 90% success rate). In this same period, six nationals were executed.

Currently, 57 Mexicans are facing criminal proceedings that may result in the imposition of a death sentence.

Today, 60 Mexicans are also sentenced to death, 51 of them originally included in the International Court of Justice (ICJ) *Avena* Judgment. Of these, 37 remain on death row (one was a US citizen, one died of cancer; in nine cases, the sentence was commuted and three have been executed).

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### **Support to families of those sentenced to death or executed**

Historically, the Mexican Government through its consular network has provided consular assistance to Mexican nationals and their families facing the difficult process of capital murder charges. During each of the executions in the past 20 years, the staff of the consulates of Mexico have made the arrangements for the family to attend the hearings and trials, as well as facilitated visits to inmates in maximum security units, especially in Texas where there have been most executions.

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The type of assistance that is provided to families is very diverse, ranging from money deposits to the inmate's account (Inmate Trust Fund) for the purchase of essential items and food, different from their daily diet; also, deposits of money are made for health care since in 2011 the Texas Department of Criminal Justice (TDCJ) started charging \$100 a year per inmate for their health care.

In order for those sentenced to death to keep in touch with their families, the Mexican Consulate General in Houston, Texas, regularly sends office supplies and postage stamps for writing and sending letters to their loved ones, a situation that puts them in touch with the reality that happens outside the death row.

Another example of how the Mexican government tries to keep those sentenced to the death penalty in touch with the outside world is the payment of subscriptions to newspapers or magazines allowed by TDCJ. The purchase of electrical appliances such as fans or kettles, clothes or shoes, is also part of the support provided to Mexican nationals sentenced to the death penalty.

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In terms of direct support to the families of those sentenced to death, and taking into account that the criminal processes can sometimes last more than 20 years, the Mexican Government through its consular network provides various types of logistical assistance to procure visits of family members to prisons. This process is complicated because sometimes relatives living in Mexico do not have proper immigration documents to visit the USA; in those cases, the Mexican consulate requests from the US Government visas or special humanitarian paroles to enter its territory and then makes the proper arrangements with TDCJ to request permission to visit the sentenced.

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When the execution of a Mexican national is imminent, the process of keeping the family in close contact with the sentenced is intensified; the Consulate of Mexico requests TDCJ extended visitation time at least two weeks before the date of execution; these visits can last a whole day and take place several times before the execution date; this intensified visitation helps the families assimilate in a better manner the fatal outcome, allowing long and cordial conversations with the sentenced.

During these visits, the family can count on the logistical and emotional support from the staff of the Mexican Consulate General in Houston that is well trained due to unfortunate past experiences of executions; these experiences have allowed our staff to have adequate knowledge to guide the family through the hardship that implies the previous and subsequent phases of the execution.

To illustrate the extent of support provided by the Mexican government to the families of those sentenced to death, we can cite the recent case of Mr. Edgar Tamayo, whose execution took

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place on 22 January 2014. During the 20 years of his criminal process from arrest to execution, logistical support was provided to parents and siblings to realize multiple visits in the Polunsky Unit or “death row”, as well as financial support.

In the weeks leading up to the execution of Mr. Tamayo, coordinated efforts within the Mexican MFA and the Consulate General in Houston were concerted to provide logistical, financial and emotional support to about 20 direct and indirect relatives who went to Houston to visit or be near Mr. Tamayo. It stands out the support given to a daughter of Mr. Tamayo who in the days before the execution was granted Mexican citizenship as a sign of the pride she felt for the country of origin of her father and also to facilitate travel to Mexico once the execution was carried out.

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The day of the execution of Mr. Tamayo, the whole family was housed in a hospitality house, a not-for-profit organization in Huntsville, Texas, whose motto is “To assist in the physical and spiritual needs of the other victims of crime, the families of those convicted”. During their stay in the hospitality house, the family of Mr. Tamayo received not only logistic but emotional and spiritual support during the pre and post execution hours.

While there has not been a formal study within the MFA on the impact of the imposition of the death penalty among children of the sentenced and executed, from first hand impressions, we can attest that the burden of not being able to visit their parents during their childhood and the extreme hardship of being near on the day of the execution, sometimes while still being a child, carries a psychological impact hard to overcome.

After the execution of Mr. Tamayo, and following the firm policy of assistance to Mexican nationals who die abroad, the Mexican government took care of all the logistical and financial arrangements regarding the funeral and transfer of his remains to his place of origin in Mexico.

Good practices learned from the Mexican experience on death penalty in the USA have been translated to other latitudes. Three Mexican nationals are facing such punishment in Malaysia and they have been afforded with the same standard of care and attention by our Embassy since the initial phases of the prosecution in 2008. Family members have been transported and lodged and the procurement of legal representation has been paid at the expense of the Mexican government, reaffirming its firm policy against the death penalty.

The Government of Mexico has worked over the years to further the cause of promoting the long awaited legislative implementation of the *Avena* judgment of 2004 and is thankful to countries and members of the civil society sympathetic to this cause. While we recognize the efforts of the US federal government with members of the US Congress in raising awareness of the urgent need to fulfill its obligations, we request that prompt action is taken in the near future that provides the legal review and reconsideration mandated by the ICJ and recommended by its own Supreme Court of Justice.

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## FOCUS ON JAPAN

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**Akira Maeda, Professor, Tokyo Zokei University**

In 1999, several municipal governments denied two children's resident registration. The children's father was Shoko Asahara, a leader of a cultist group who had caused a series of serious crimes including the Tokyo Subway Nerve Gas Attack in 1995. Local people turned into a mob and yelled, 'You children of the Devil cannot enjoy any human rights'. One of the children was refused entry to the local public elementary school simply because he was a son of Asahara.

We cannot say this is just an extreme case. Quite often, family members of criminals suffer various kinds of harassment and discrimination. So if a father was accused of serious crimes such as murder, a mother has no choice other than moving to another place, getting divorced and changing her family name. In such cases, the mother never tries to have contacts with her ex-husband, and the relation between the children and their father are totally severed.

If the accused maintains his innocence, the situation can be different. His wife, who believes her husband, tries to keep the tie between the father and his children. But even so, of course she finds great difficulties in parenting, and sometimes the children must be brought to a children's home, which is under the supervision of the local government. Generally speaking, the authorities of children's homes are very reluctant to liaise between children and their incarcerated parents.

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Even if children have access to their incarcerated parents, the prison authorities do not provide any special service for child visitors. Until 1994, prison authorities imposed strict restrictions on prisoners' meetings with children under the age of 14.

Now such restrictions are lifted, but the circumstances still make it difficult for children to visit their parents. Prisons are often located in a remote area, very far from children's home. There are no special facilities for children such as a playroom or nursery. Meetings take place in a room that has a partition and visitors are not allowed to physically touch prisoners. In fact,

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there are some prisons that do have specially designed rooms for family visit, but such rooms are only available for very limited number of first-time offenders whose sentences have been finalized. The death row prisoners are never allowed such a type of meeting with anyone.

In most cases, even after the execution family members cannot touch the prisoner’s body. Not only family members but also prisoners on death row themselves do not receive prior notification of executions. On the other hand, prison rules provide that executed body shall be cremated by the authorities if no one claimed the body within 24 hours from the executions. Because of this rule along with a lack of prior announcement of execution, even if family members do want to receive the body, while such cases are quite rare, they usually fail to do so.

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In Japan, few organizations dedicate themselves to protection of human rights of prisoners, such as Center for Prisoners’ Rights (CPR), which translated the QUNO’s report [‘Lightening the Load of the Parental Death Sentence on Children,’ Ed.<sup>1</sup>] into Japanese. The issue of children of prisoners in general has been hardly raised.

But recently, one young man started to openly speak as a son of a death row inmate, who killed his wife, that is, his father killed his mother. He has revealed harsh experiences in his childhood. His testimony underpins that children’s situations described in the QUNO report are universal among the retentionist countries including Japan.

I believe this report will have a substantial impact on those who work for children’s rights and on the general public, and bring good momentum for us to shed a light on this important issue.

## THE HUMAN RIGHTS COUNCIL (HRC) PANEL DISCUSSION AND OTHER UN DEVELOPMENTS

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**Zaved Mahmood, Human Rights Officer, Office of the High Commissioner for Human Rights**

In my intervention I will present the report on the HRC Panel discussion on the human rights of children of parents sentenced to the death penalty or executed<sup>2</sup> held on 11 September 2013, and also briefly talk about developments within the Committee on the Rights of the Child (CRC), the Universal Periodic Review (UPR), and the General Assembly.

Based on the HRC's request, the Panel discussion aimed to:

- examine the negative impact of the imposition and carrying out of the death penalty on the human rights of children whose parents are sentenced to the death penalty or executed;
- promote better understanding of the international human rights norms and standards relevant to the rights of those children; and
- discuss the protection and assistance that those children may require in the enjoyment of their human rights.

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The key issues and recommendations that came up during the HRC panel discussion were the following.

In States that have not abolished the death penalty, international human rights law requires, as a minimum, full compliance with the restrictions prescribed in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. These restrictions include, *inter alia*, the prohibition of the use of capital punishment for crimes committed by persons under the age of 18.

In addition to these restrictions, States that use the death penalty also need to consider how to address the consequences of its use on society at large, in particular on the families of individuals sentenced to death or executed.

**“States that use the death penalty also need to consider how to address the consequences of its use on society at large, in particular on the families of individuals sentenced to death or executed.”**

In its resolution 22/11, the HRC expressed deep concern regarding the negative impact of the imposition and carrying out of the death penalty on the human rights of children of parents sentenced to death or executed, and urged States to provide those children with the protection and assistance they require.

Children of parents sentenced to the death penalty had been invisible in statistics, and in policies and programmes. Very little information is available on this issue.

However, existing research suggests a number of negative short- and long-term effects on children whose parents were sentenced to death or executed, including infringement of the enjoyment of a range of rights and obligations set out in the Convention on the Rights of the Child. These included, in particular:

- the obligation to ensure that the best interests of the child are duly taken into account and protected (art. 3);
- the right to be free from violence, in particular mental violence (art. 19);
- the right to special protection and assistance by the State when a child is deprived of his or her family environment (art. 20); and
- the right to a standard of living adequate for a child’s physical, mental, spiritual, moral and social development (art. 27, para. 1).

With regard to the application of the concept of “best interests of the child”, the HRC Panel highlighted that this concept is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention on the Rights of the Child and the holistic development of the child.

In this regard, the Panel further referred to the CRC’s General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. General Comment No. 14 states that States parties to the Convention are legally obliged to carry out this assessment each time a decision concerning a child is taken; and such determination and assessment has to be singular, relevant and explicit. The full application of the concept of the child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

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Another critical issue is discrimination. Children of parents who were sentenced to death might suffer discrimination, especially where the parent’s offence is publicly known, including through media exposure. Evidence also shows that the death penalty disproportionately affects the poor and certain racial, ethnic and religious minorities. Thus, a child could suffer discrimination on grounds of race, religion or economic condition, as well as owing to the stigma due to the death sentence faced by his or her parent.

In many situations, convicted inmates are not informed of their forthcoming execution, nor are their families and lawyers, and bodies of executed inmates are not returned to the families. In that regard, we must take note of the conclusion of the Human Rights Committee that the failure to inform family members of upcoming executions is incompatible with article

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7 of the ICCPR and constitutes inhumane or cruel treatment. Such secrecy also violates the right of the child to information regarding sentencing of their parents under article 9, paragraph 4 of the Convention on the Rights of the Child.

It is critically important to ensure that the situation of children of parents facing the death penalty is given urgent attention and action to support them through a protective environment, and through services and recovery and reintegration measures.

Many foreign nationals are facing the death penalty in other countries. Children of foreign nationals sentenced to death also need help to be repatriated to the country of origin, or to stay near the parent, depending on various factors, such as the child’s age and the availability of suitable carers. In that regard, States must fully respect the provision of consular assistance to foreign nationals.

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During the Panel, panellists and several delegations emphasized that the best option would be abolishing the death penalty; however, where that was not yet the case, it was important to develop measures to minimize the harm suffered by the children of parents sentenced to death or executed. In this regard, OHCHR urges States that have not yet ratified the Second Optional Protocol to ICCPR to do so.

### **Recommendations from the HRC panel**

The following recommendations were made during the Panel for further action by the Human Rights Council and other United Nations human rights entities, including the relevant treaty bodies:

- (a) Convene an expert seminar, with United Nations experts and practitioners, in order to investigate the issue further, including a full examination of the applicable human rights framework, to enable all relevant international human rights treaty bodies and Special Procedures to engage with the issues, as well as to provide guidance to States and other bodies;
- (b) Develop further guidance regarding the form of assistance referred to in articles 9 and 20 of the Convention on the Rights of the Child, in particular by the Committee on the Rights of the Child drafting a general comment to elaborate on the issue;
- (c) Provide due attention to protection of all children from all forms of violence in the context of the current development of the post-2015 agenda, as this could contribute to social progress and the realization of the Millennium Development Goals;
- (d) Conduct further research both to understand the scale of the problem for those affected and the issues that individual children of parents sentenced to death experience; and what States, national human rights institutions, civil society organizations and other stakeholders can do to address challenges in the full enjoyment of the human rights of children whose parents are sentenced to the death penalty or executed;
- (e) Call on States that still maintain the death penalty to ensure that the rights of the child to information and last visits or communications, as recognized in Human Rights Council resolution 19/37 on the rights of the child, are effectively protected; return the body of a person executed and any personal effects to the family for burial, without payment by the family, or inform them where the body is buried and allow them reasonable access to that location; immediately end any form of secrecy surrounding the use of the death penalty, and ensure domestic legislation complies with international standards on transparency.

## Developments in the CRC, UPR and General Assembly

In conclusion, I would like to highlight some recent developments. During the review of several States parties' reports on the implementation of the Convention on the Rights of the Child, the CRC addressed issues related to the human rights of children of parents sentenced to death or executed. For instance, in its Concluding Observations on Kuwait, the Committee recommended to the State Party "to assess and fully take into account the best interests of the child in judicial proceedings where parents are involved and when sentencing parents to death." (See *CRC/C/KWT/CO/2, paragraphs 31 and 32*). Similarly, this issue has been addressed during the recent sessions of the Universal Periodic Review process of the Human Rights Council.

In its omnibus resolution A/RES/68/147 on the rights of the child, adopted without a vote on 18 December 2013, the General Assembly "acknowledges that a parent's deprivation of liberty, sentencing to death or life imprisonment has a serious impact on children's development, and urge States, in the framework of their national child protection efforts, to provide the assistance and support these children may require."

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We also need to emphasize the role of national human rights institutions for the protection of the human rights of children of parents sentenced to death. They could play a pivotal role in various ways, including by facilitating visits to prisons, monitoring human rights violations suffered by those children, receiving complaints from the children themselves or from their relatives and following up the cases of reported human rights violations with the concerned authorities.

OHCHR encourages States, national human rights institutions, civil society organisations, human rights treaty bodies and the Human Rights Council to continue considering this important issue in their respective work.



## SUMMARY OF KEY POINTS FROM THE DISCUSSION FOLLOWING THE PRESENTATIONS BY THE PANELLISTS

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### Death penalty as a form of violence against children

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**Ann Kristin Vervik** commented that in all the research carried out in the context of the mandate of the Special Representative of the Secretary General on Violence against Children they have seen that using violence to respond to violence is not going to help but is actually propelling more violence, more crime in society. Therefore, an important recommendation is to promote awareness-raising and a paradigm shift in the mindset of people in society – not just parliamentarians and lawmakers but also people at the grassroots level. The media very often play a negative role as they present very harmful images of offenders, including young offenders, as being evil and, by doing so, contribute to the perpetuation of an eye-for-an-eye, tooth-for-a-tooth mentality.

### Children unable to visit parents

**Prof. Akira Maeda** explained that the Japanese government carries out a silence policy in prison. Prisoners are expected

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to keep silence while in prison, and this applies especially to prisoners on death row. This silence policy results in a no information policy about persons sentenced to death; if prisoners have access to their children it is difficult to maintain this silence policy. NGOs cannot visit or interview prisoners either.

He also recalled that numbers of those supporting death penalty in Japan had gone from 60% in 1999 to over 80% in 2009. However, in more recent years there has been more attention to the rights and well-being of children of prisoners, which can impact on public support for the death penalty.

### **Assessment of the best interests of the child when sentencing a parent**

**Ann Kristin Vervik** commented that there is enough evidence to know that it is very counter-productive to apply the death penalty and that applying it to a parent deprives the child of most of their rights – whether it is education, health, protection from traumatising violence, psychological health etc. – potentially all the rights in the Convention on the Rights of the Child.

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There is a clear obligation in a rights-based approach to undertake a child rights impact assessment before any decision regarding the sentencing of a parent. If the alleged offender has children, consideration should be given to how they will be impacted by a sentence. She added that, regrettably, this is something that is often not done but that it was important to continue to promote it.

**Rachel Brett** pointed out that General Comment No. 14 of the CRC includes not only guidance on assessing the best interests of the child but also refers specifically to doing so when a parent is in conflict with the law.<sup>3</sup>

### **UN Expert Seminar on the applicable human rights framework**

In commenting on a recommendation made in the HRC Panel for further guidance by the CRC (such as through a General Comment) regarding the form of assistance referred to in articles 9 and 20 of the Convention, **Zaved Mahmood** also

recalled that according to article 24 (1) of the International Covenant on Civil and Political Rights “Every child shall have ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”, while article 36 is about when and how the death penalty can be applied (e.g. only for the most serious crimes).<sup>4</sup> Exploring the links between these articles could be done, for example, in the expert meeting that had been recommended in the HRC Panel debate and so involve several treaty bodies and Special Procedures. The expert meeting could be a useful way of looking not only at the Convention on the Rights of the Child but also other treaties with regard to this issue.

### **Assistance in potential repatriation of children**

**Euclides del Moral Arbona** commented that the Mexican program had not yet had the need to work with minors in terms of repatriation on a death penalty case, however the Mexican consular network on a regular basis monitors all child custody cases, dependency cases/hearings, where child protection services in the USA are keeping children away from their parents for different reasons, and can take legal custody of the children and then work out their repatriation and reunification. Should a similar case come up in relation to a death penalty case, the Mexican consular authorities would be ready to assist.

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### **Early intervention key factor in success in death penalty cases**

Explaining how the Mexican Capital Legal Assistance Program finds out about potential death penalty cases involving Mexicans, **Euclides del Moral Arbona** noted that on the one hand it relies on the fulfilment of the obligation of the receiving country to notify Mexican consulates, as per the Vienna Convention on Consular Relations article 36, but despite US efforts to comply with this obligation, there are still cases where this does not happen. The success of the program rests on the fact that they have attorneys monitoring all first-degree murder cases in the USA to check whether or not a Mexican national is involved. The attorneys notify Mexican program officials who then make a first assessment of the case through a questionnaire, trying to

understand what the situation is and establish the citizenship of the individual concerned, and then work on the cases through the various phases. Early intervention is what has made the program so successful.

### Number of children affected

**Rachel Brett** recalled that one of the questions to which we do not have an answer is the size of the population that we are talking about. With regard to this, one of the panellists from the HRC Panel debate, Sandra Joy [Jones at the time of the HRC Panel, Ed.], had recently published a book ‘Grief, Loss, and Treatment for Death Row Families’, which includes a specific section on the children. Joy had tried, at least in relation to the US, to come up with some kind of an estimate and had taken January 2013, for which she had the statistics for the number of prisoners serving a death sentence in the USA (i.e. 3,125 individuals), as a sample.

Taking a very conservative estimate, that each of these prisoners will have two children, Sandra Joy had estimated that some 6,250 children were *at that date* facing the impending execution of parent. That estimate did not include those who had been exonerated or whose sentence had been commuted, so there was a wider group of children who had faced the possible execution of a parent. Rachel Brett emphasised that this was only a snapshot – that is an estimate made for January 2013 – adding that she, through QUNO’s work on children of prisoners, meets adults who say ‘I went through this as a child, I am still affected’. She stressed she was not talking just about the USA: she has met persons from every region, including Europe, who talk with pain about that experience. This shows that in many cases there are long-lasting, even permanent, effects on the children.

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### Death penalty and transitional justice processes

Recalling that the effects on children of a parental death sentence are long-lasting led **Rachel Brett** to also talk about the link between parental death sentences and transitional justice processes. Countries that go through a transition process need

to look into this issue (e.g. with regard to providing information about the persons who were executed). She expressed the hope that this issue would be considered in the context of the Swiss-led HRC initiative on the transitional justice Special Procedure mandate.

### **Moratorium on sentencing (as well as executions)**

**Rachel Brett** welcomed that the High Commissioner for Human Rights, in her statement to the HRC High-Level Panel discussion on the question of the death penalty [5 March 2014, Ed.] had highlighted the importance of a moratorium that extends to sentencing as well as executions. This was a particularly welcome development as, while a moratorium on executions is a good step, it is not enough if individuals continue to be sentenced to death and those already sentenced to death remain on death row because their sentences are not commuted. This situation affects not only the prisoners but also the families and the children.

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### **Role of the Universal Periodic Review process, Treaty Bodies and Special Procedures**

**Zaved Mahmood** noted that the Universal Periodic Review process provides another venue to work on this issue, to encourage States to reflect on the impact on children of the death penalty. He recalled that the resolution requesting the HRC Panel had been adopted without a vote and that no State opposed discussion of the issue during the Panel. He also suggested that the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, who has already addressed the issue of the death penalty within his mandate, could be encouraged to explore this topic as well.

### **Role of independent monitoring mechanisms**

**Ann Kristin Vervik** noted the importance of national human rights institutions as independent monitoring mechanisms and recommended that awareness be raised among ombudsmen (e.g. those visiting prisoners, who should ask about children and coordinate with those working with children).

That is why I urge all States that still retain the death penalty as a first step to introduce a moratorium on it. As they do so, they should also go beyond simply ceasing executions. They should aim for a suspension of capital punishment for all who might be, or have been, sentenced to it. Prosecutors should no longer seek the death penalty, and judges should not impose it. This could be done, for example, through a directive from the highest judicial body.

In addition, let us not neglect the importance of the possibility of pardon or commutation.

**Navi Pillay, United Nations High Commissioner for Human Rights<sup>5</sup>**

**Zaved Mahmood** indicated four ways in which NHRIs can play a role: monitoring violations of the rights of children of parents sentenced to death; facilitating visits; receiving complaints from children themselves or their relatives; and following up on these cases with the competent authorities.

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### **Role of the judiciary and of bodies deciding on pardons, commutations**

On the role of judges, **Zaved Mahmood** recalled that in some countries the judiciary has issued sentencing guidelines on the death penalty (e.g. in Uganda). In India, the Supreme Court has issued some directives to the courts with regard to death row prisoners. He suggested learning from these experiences and reflecting on how the issue of sentencing guidelines could be brought up.

On the issue of commutation, pardon and amnesty, he suggested that the impact on children of the death penalty imposed on a parent be brought to the attention of those competent to make decisions authorising commutation, pardon or amnesty (e.g. Pardon boards, Heads of State or Heads of Government).

## Sharing of good practices in assisting children and other family members

Commenting on possible ways to share, including with other consulates, experiences in assisting individuals facing the death penalty, their families and children, **Euclides del Moral Arbona** mentioned some contacts with other countries' offices of consular assistance, like the UK, to share experiences in assisting nationals facing death sentences. He added that while the death penalty programme is the one that gets most attention, Mexico also has a long-standing policy of visiting nationals in detention (prison and immigration). A recent mandate from the Mexican Congress had been given to put aside funds specifically for women, including pregnant women, in detention.



## ADDITIONAL INFORMATION

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- 'Children of Parents Sentenced to Death or Executed. How are they affected? How can they be supported?' (Child Rights Connect, August 2013)
- 'Lightening the Load of the Parental Death Sentence on Children' (Quaker UN Office, June 2013)
- 'Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed' (UN Index: A/HRC/25/33, December 2013)
- 'Children of parents sentenced to death or executed: UN developments since the HRC Panel'. Written Statement by Friends World Committee for Consultation (UN Index: A/HRC/25/NGO/38, February 2014)
- 'Question of the death penalty. Report of the Secretary-General' (UN index: A/HRC/27/23 and A/HRC/27/23/ Corr.1, July 2014)

1. <http://www.quno.org/resource/2013/6/lightening-load-parental-death-sentence-children> [last accessed on 9 May 2014]
2. ‘Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed’ (UN Index: A/HRC/25/33). The panel discussion was organised by the Office of the High Commissioner for Human Rights (OHCHR) during UN Human Rights Council session, pursuant to Council’s resolution 22/11
3. See ‘General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)’, UN Index: CRC/C/GC/14
4. International Covenant on Civil and Political Rights, article 6:

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*
3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*



4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
  5. *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.*
  6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*
5. 'Opening remarks of Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the High-Level Panel Discussion on the Question of the Death Penalty, Human Rights Council 25th Session', available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14339&LangID=E> [last accessed on 8 May 2014]







### **About this publication**

On 11 March 2014, during the 25<sup>th</sup> session of the UN Human Rights Council, the Quaker United Nations Office together with Belgium, Mexico, Montenegro and Norway, organised a side event on ‘Children of Parents Sentenced to the Death Penalty or Executed: Developments, Good Practices and Next Steps.’

This publication compiles the presentations made by the panellists and offers a summary of the discussion that followed the presentations.

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