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Allegra Franchetti
Secretary
Committee on the Rights of the Child
Treaty Bodies Division
Office of the High Commissioner for Human
Rights
UNOG-OHCHR

Geneva

SWITZERLAND

9 September 2011

Dear Ms Franchetti,

AMNESTY INTERNATIONAL'S WRITTEN SUBMISSION TO THE COMMITTEE ON THE RIGHTS OF THE CHILD AHEAD OF DAY OF GENERAL DISCUSSION ON THE RIGHTS OF THE CHILDREN OF INCARCERATED PARENTS

Amnesty International welcomes the opportunity to submit information to the Committee on the Rights of the Child (the Committee) for its Day of General Discussion on "Children of incarcerated parents", with a view to providing States and other actors with more comprehensive guidance as to their obligations to promote and protect the rights of children of incarcerated parents, as outlined in the Article 9 of the Convention on the Rights of the Child (CRC).

For this written contribution, Amnesty International has chosen to focus on some key elements of the relation between children and parents who have been sentenced to the death penalty, particularly with a view to highlighting situations that occur in violation of existing international standards on the use of capital punishment and which undoubtedly impact on the well-being and enjoyment of rights of the child. These elements include the secrecy surrounding detention on death row and execution in some State Parties and the wider impact of the death penalty as such on child family members.

The organization would like to express at the outset its support for this initiative. The drafting of recommendations on the children of incarcerated parents by the Committee provides a key opportunity to further clarify legal duties of States with regard to, among others, the protection of the rights of the child including vis-à-vis the use of the death penalty. These protections already include the prohibition against imposing capital punishment for offences committed by persons below 18 years of age,¹ and standards protecting nursing women from the death penalty.² These recommendations by the Committee would also significantly contribute to the general debate on abolition of the death penalty by introducing the prospective of a rights-holder, the child, which is often omitted in criminal justice considerations.

¹ Article 6(5) of the International Covenant on Civil and Political Rights; Article 4(5) of the American Convention on Human Rights and Article 37(a) of the CRC; despite this clear prohibition under treaty and customary law in 2010 Iran, Pakistan, Saudi Arabia, Sudan, United Arab Emirates and Yemen imposed death sentences for crimes that were committed when the defendants were below 18 years of age. One juvenile offender was executed in Iran last year. Additionally, juvenile offenders are known to be currently held in detention under sentence of death in additional countries, such as Nigeria and Uganda.

² Article 30 of the African Charter on the Rights and Welfare of the Child; Article 4(1) of the Protocol on the Rights of Women in Africa; Article 7(2) of the Arab Charter on Human Rights.

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Secrecy on the use of the death penalty and families of prisoners

Article 9(4) of the CRC demands that State Parties, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. This means that the child in principle has a right to information about whether a parent is in detention with the possibility of being executed, and what has happened to the remains of an executed parent. At the very least, the remaining adult family members must be given this information in order to make an informed choice of whether and how to pass on this information to the child in a way that is consistent with the child's maturity. Should the State Party refuse to provide this information based on alleged concerns over the well-being of the child, it needs to justify this in communication to the adult representatives of the child. Otherwise the child's best interest (Article 3 of the CRC) will not have been served.

International standards on the use of the death penalty require authorities of countries that retain this punishment in their legislation to make information regarding its use publicly available. Transparency on the use of the death penalty is critical to ensure observance of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, as adopted by the UN Economic and Social Council in 1984, and prevent the arbitrary deprivation of life at all times. This means that the general public, but especially family members including children, must be duly informed of the execution of a death sentence. It has also been recognised by the Human Rights Committee, with regard to enforced disappearances, that family members of persons deprived of their liberty have a right to know about the fate of their loved ones, and that they too can be victims of violations committed against their loved ones, in particular cruel, inhuman or degrading treatment or punishment.³

In relation to the death penalty, the failure to provide the death row inmate, their families and children with information such as the date of the prisoner's execution, or to allow a last visit or communication with the prisoner, the secrecy surrounding the actual execution, and the refusal to return the body to the family for burial or to indicate where the body is located, could all constitute forms of cruel, inhuman or degrading treatment for the family, including children, which is prohibited under Article 37(a) of the CRC. In addition, the impossibility of a true burial in the absence of a body may constitute a violation of the child's right to manifest its religion (Article 14 CRC). Finally, withholding this information without explanation could be an arbitrary interference with the child's family life (Article 16 of the CRC).

The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation. In the most extreme instances, prisoners have learned of their impending executions only moments before dying, and families have been informed only later, sometimes by coincidence rather than design. These practices are inhuman and degrading and undermine the procedural safeguards surrounding the right to life."⁴ In addition, the Human Rights Committee has stated that with regard to the International Covenant on Civil and Political Rights that "the failure to notify the family and lawyers of the prisoners on death row of their execution [is] incompatible with the Covenant".⁵

³ See, for example, *Quinteros v Uruguay* (1983) UN Doc CCPR/C/19/D/107/1981 para 14; *Kurt v. Turkey*, European Court of Human Rights Case No. 15/1997/799/1002 Judgment of 25 May 1998, paras. 133-4.

⁴ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para. 32.

⁵ Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

Amnesty International has documented that in several countries – including Belarus⁶, Botswana⁷, Egypt⁸ and Japan⁹ – death row inmates are not informed of their forthcoming execution, nor are their families or lawyers. In Belarus, Botswana and Viet Nam the bodies of the executed prisoners are not returned to their families for burial.¹⁰

Svetlana Zhuk, mother of executed prisoner Andrei Zhuk, described to Amnesty International in late 2010 her continuing grief at not knowing where her son is buried, and how Andrei's eight-year-old son often stood silently in front of his father's portrait. "What he thinks about now, I don't know," she said.

In March 2010 Svetlana Zhuk had told Amnesty International that she found out about her son's execution when she tried to deliver a food parcel to the prison in Minsk, Belarus, where the man was held. The parcel was returned to her by the prison authorities and she was told that the two men "had been moved". She was told not to come looking for her son any more, but to wait for official notification from the court. Three days later, on the morning of 22 March, she was informed by staff at the prison that her son had been shot and his body was not returned. In October 2010 she filed a legal case against the Belarusian authorities for violating her right to manifest and practice her religion by refusing to release her son's body or to tell her where he had been buried. It can also be said the behaviour of the Belarusian authorities violated the rights of Andrei Zhuk's son under Articles 9, 14, 16 and 37 of the CRC. When secrecy surrounding the death penalty amounts to inhuman and degrading punishment, as outlined by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Article 39 of the CRC clarifies that the State party must take steps promote the child's physical and psychological recovery.

The general impact on a child of the death penalty for a parent

Where it may be appropriate for some young children to remain with their parents while they are incarcerated, special attention should be given to the treatment of these children ensuring that their rights are protected, particularly considering that at present detention facilities in several countries do not allow for an adequate treatment of prisoners themselves.

The imposition of a death sentence on a parent for the child's well being is also a general concern. The anxiety and pain of losing a parent applies to the children of executed prisoners just as to those of murder victims. The contradiction of the cold blooded killing of an individual by the state in the name of justice was reflected in the confusion in 2005 of a 10-year-old girl who asked at the time of her father's execution by the U.S. state of Texas: "They're going to kill him because he killed somebody, so when they kill him, who do we get to kill?"¹¹

Also, the stigmatization, isolation and feeling of shame experienced by many children of prisoners would likely be exacerbated for the child of a person executed, or soon to be executed, by the state,

⁶ Amnesty International, Ending Executions in Europe: Towards abolition of the death penalty in Belarus, EUR 49/001/2009, March 2009. See also: <http://www.amnesty.org/en/news-and-updates/execution-belarus-death-row-prisoner-confirmed-2011-07-26>

⁷ Amnesty International, Death Sentences and Executions 2010, ACT 50/001/2011, March 2011.

⁸ Amnesty International, Egyptian man executed amid questions over murder conviction, March 2010: <http://www.amnesty.org/en/news-and-updates/egyptian-man-executed-amid-questions-over-murder-conviction-2010-03-12>

⁹ Amnesty International, Japan: Hanging by a thread: Mental health and the death penalty in Japan, ASA 22/005/2009, September 2009.

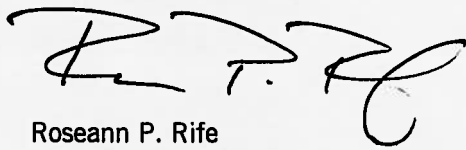
¹⁰ Amnesty International, Death Sentences and Executions 2010, ACT 50/001/2011, March 2011

¹¹ Mithre J. Sandrasagra, United Nations, 12 February 2007 (IPS).

and poses the danger of discrimination based on the status of the child's parent in violation of Article 2 of the CRC.

Prisoners sentenced to death can be detained under different conditions to other prisoners; commonly limits on contact with family members are part of these conditions. In some cases 'contact visits', that is visits involving any form of physical contact, are banned completely, which could be particularly upsetting for children, especially if the child knows their parent only has a limited time before they are executed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. P. Rife', with a stylized flourish at the end.

Roseann P. Rife
Head of Special Projects
Global Thematic Issues

Encl: Annex - Recommendations

ANNEX –Recommendations

Amnesty International recommendations for action the Committee can take with respect to children of inmates on death row, by urging governments of State Parties to:

1. publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including providing information on date and time of execution and place of burial to family members.
2. ensure that death row prisoners and their children are kept fully informed of the progress of petitions for pardons, reports presented to bodies such as clemency commissions and the reasoning behind the recommendations of these bodies to support or reject petitions.
3. ensure that lawyers and children of convicted prisoners have access to their relatives throughout the judicial proceedings and detention period, including physical contact for family members; are kept fully informed of the prisoner's place of imprisonment and, in advance, any transfer; allowed to have regular and private meetings with the prisoner; informed well enough in advance of the execution date to allow for a final visit; and permitted to have the prisoner's body for burial and all personal effects.
4. commute all death sentences imposed for crimes committed by people that were below 18 years of age at the time of the crime and ensure that juveniles are held separately from adults.