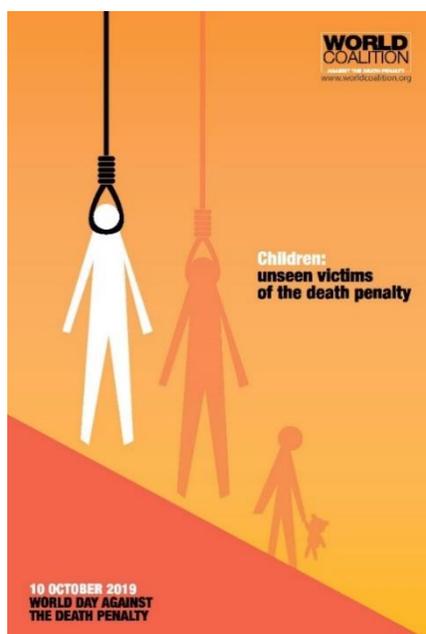


THE RIGHTS OF CHILDREN WHOSE PARENTS HAVE BEEN SENTENCED TO DEATH OR EXECUTED

DETAILED FACTSHEET

17th World Day Against the Death Penalty



On 10 October 2019, the World Coalition Against the Death Penalty and abolitionists organizations worldwide will celebrate the 17th World Day Against the Death Penalty. The focus this year is on the rights of children who have a parent sentenced to death or who has been executed. Dedicated to the need to uphold the human rights of all people, the World Coalition condemns the violations of these children's rights. They are unseen victims of the death penalty.

Acting for the definitive and universal abolition of the death penalty requires recognizing children of those sentenced to death or executed and creating awareness on the unequal treatment they are submitted to in retentionist countries around the world.

Introduction – Children: Unseen Victims of the Death Penalty

According to Amnesty International, at least 19,336 people in the world were on death row at the end of 2018.¹ Behind this statistic, we can only guess how many of those individuals have children – and conversely how many children have had a parent who has been executed. The Quaker United Nations Office (QUNO) recognizes that this final number is difficult to obtain². Lacking those figures may also explain part of the reason why those children who are faced with this problem lack support they could, and should, legitimately receive.

Although it is difficult to arrive accurately at number of children who have at least one parent under sentence of death – or who has been executed – there are methods to find an estimation. The

¹ Amnesty International, 10 April 2019, « Death sentences and executions 2018 », page 11.

² Olivier Robertson et Rachel Brett, 2013, *Lightening the Load of the Parent Death Penalty on Children*, Quaker United Nations Office, page 3.

first consists of accurately arriving at the average number of children in a given population and extrapolating a number from there; however, this method does not allow for any potential inconsistency between incarcerated populations and non-incarcerated populations. The second consists of obtaining the average number of children exclusively within a detained population, but such demographic data are not always available.³ Despite a lack of such specific demographic data, other sociological and economic data are better known and globally accepted; most of the children of parents who have been sentenced to death are from lower classes and/or minorities, as is typically the case of the individual who is sentenced to death⁴.

This year, the World Day Against the Death Penalty will also be the occasion to commemorate the 30th anniversary of the United Nations Convention on the Rights of the Child (CRC), adopted by the General Assembly on 20 November 1989. Today, the CRC has been ratified by almost every State in the world⁵. The CRC guarantees every child the right to « *appropriate legal protection* »⁶ without distinction of any kind as to « *the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status* »⁷ and so, independent from the status of a parent under a death sentence or who has been executed.

In order to give more visibility to this issue and to children's rights- and their violations- within the context of the death penalty and a parent, this detailed factsheet is structured in three parts. First, we will introduce the main legal context and analyze the impacts of the death penalty on the rights of the child. Then, we highlight the impact the death penalty of a parent can have on the best interests of the child, as they are defined and protected by international standards. Finally, we will explore additional issues related to this theme, on the effects of the death penalty on the rights of every child and the need to encourage the creation of reconciliation tools in order to reduce those negative effects.

Methodology

This detailed factsheet has been prepared by the Secretariat of the World Coalition Against the Death Penalty, in consultation with the Quaker United Nations Office, The Advocates for Human Rights with help from the Fredrikson and Byron P.A. law firm; facts and figures have been drawn from Amnesty International's 2019 global report on sentences to death and executions.

³ Ibid., page 3.

⁴ Ibid., page 3.

⁵ With the notable exception of the United States who signed in 1995, but never ratified.

⁶ United Nations General Assembly, 1989, Convention on the Rights of the Child, para. 9 of the Preamble.

⁷ Id., 1989, Convention on the Rights of the Child, article 2(1).

I. The Best Interests of the Child in the Context of the Death Penalty

According to the CRC, a “child refers to every human being below the age of eighteen years” unless the domestic law States that the age of majority is “attained earlier”.⁸ Other international standards share the same definition, such as the African Charter on the Rights and Welfare of the Child (ACRWC) which uses the very similar words.⁹

Table 1. The prohibition of the death penalty on people under 18 years of age at the time of the offense

The decision to deliver a sentence of death to someone who was under the age of 18 at the time of the offense is forbidden by many **international human rights standards**:

- Article 37(a) of the United Nation Convention on the Rights of the Child
- Article 6(5) of the International Covenant on Civil and Political Rights
- Article 5(3) of the African Charter on the Rights and Welfare of the Child
- Article 4(5) of the American Convention on Human Rights
- Article 3 of the Safeguards guaranteeing protection of the rights of those facing the death penalty. Approved by Economic and Social Council resolution 1984/50 of 25 May 1984

As well in **international humanitarian standards**:

- Article 68 of the Fourth Geneva relative to the Protection of Civilian Persons in Time of War
- Article 77(5) of the First Additional Protocol relating to the Protection of Victims of International Armed Conflicts
- Article 6(4) of the Second Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts

The notion of the “best interest of the child” has been enshrined in law to protect the rights of children. The Convention on the Rights of the Child makes this a primary consideration in all actions concerning children.¹⁰ The best interests of the child principle is enshrined as paramount in international standards, examples include:

- in the Vienna Declaration and Programme of Action¹¹
- in the International Convention on the Rights of People with Disabilities¹²

⁸ Id., 1989, Convention on the Rights of the Child, article 2.

⁹ Organization of African Unity, 1990, African Charter on the Rights and Welfare of the Child, article 2.

¹⁰ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 3(1).

¹¹ World Conference on Human Rights, 1993, Vienna Declaration and Programme of Action, I. para. 21.

¹² United Nations General Assembly, 2006, Convention on the Rights of Persons with Disabilities, article 7

- in General Comments No. 17 on the rights of the child¹³, No. 19 on the protection of the family¹⁴ and No. 36 on the right to live¹⁵ of the Human Rights Committee
- in the General Comment No. 14 on the right to the highest attainable standard of health¹⁶ of the Committee on Economic, Social and Cultural Rights
- by the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes¹⁷
- in the Report of the Special Rapporteur on the Human Rights of Migrants¹⁸

The primacy of the best interests of the child also applies in “courts of law”.¹⁹ The CRC also mentions the best interests of the child in articles 9, 18, 20, 21, 37 and 40. However, the protection of a child’s best interests is treated with such importance in the CRC that it may be used as an agency to condemn the decision made by sentencers who rarely take into account the situation of a child when sentencing their parent

The Committee on the Rights of the Child holds the best interests of the child as an overarching principle. The Committee affirms that the best interests of the child “may not be considered on the same level as all other considerations”.²⁰

In an advisory opinion published in 2002, the Inter-American Court on Human Rights describes the best interests of the child as a “regulating principle” based on “on the very dignity of the human being”.²¹ In a report published in 2004, the Inter-American Commission on Human Rights then made the respect of the rights of the child a “fundamental value”.²² The best interests of the child has also been recognized in European human rights standards, with two decisions of the European Courts on Human Rights, *Neulinger and Shuruk v. Switzerland*²³ in 2010 and *Menesson v. France* in 2014.²⁴ Concerning the European Union system of law, the Charter of Fundamental Rights, describes the best interests of the child as a “primary consideration”.²⁵

Regarding this, the African Charter on the Rights and Welfare of the Child provides a major juridical innovation by codifying the child’s best interests as “**the** primary consideration”²⁶ and, by doing so, further protecting its fundamentality. The African Charter provides still further level of protection of the rights of a child with regards to the death sentence of his/her parents. In article 30, the African

¹³ Human Rights Committee, 1989, General Comment No. 17 on article 24 of the International Covenant on Civil and Political Rights on the Rights of the Child, CCPR/C/GC/17, para. 6.

¹⁴ Id., 1990, General Comment No. 19 on article 23 of the International Covenant on Civil and Political Rights on the Rights of the Child, CCPR/C/GC/19, para. 9.

¹⁵ Id., 2018, General Comment No. 36 on article 6 23 of the International Covenant on Civil and Political Rights on the Rights of the Child, CCPR/C/GC/36, para. 60.

¹⁶ Committee on Economic, Social and Cultural Rights, 2000, General Comment No. 14 on article 12 of International Covenant on Economic, Social and Cultural Rights, on the Right to the Highest Attainable Standard of Health, E/C.12/2000/4, para. 24.

¹⁷ Human Rights Council 2016, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, A/HRC/33/41, paras. 8, 19, 20, 21, 38, 46 and 110(b).

¹⁸ Id. (2009), Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, A/HRC/11/7, paras. 32, 39, 40, 43, 56, 57, 62, 75, 82, 92, 100, 107 et 123.

¹⁹ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 3(1).

²⁰ Committee on the Rights of the Child, 2013, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para. 37.

²¹ Inter-American Court on Human Rights, Advisory Opinion, 2002, *Judicial Condition and Human Rights of the Child*, §56.

²² Inter-American Commission on Human Rights, 2004, Report No. 33/04, Case 11.634, *Jailton Neri Da Fonseca v. Brazil*, §80.

²³ Cour européenne des droits de l’Homme, Grande chambre, 2010, *Affaire Neulinger et Shuruk c. Suisse*, §135.

²⁴ Id., Final, 2014, Case of *Menesson v. France*, para. 81.

²⁵ European Parliament, European Council and European Commission, 2000, European Union Charter of Fundamental Rights, article 24(2).

²⁶ Organization of African Unity, 1990, African Charter of the Rights and Welfare of the Child, article 4.

Charter prohibits “that a death sentence [be] imposed on mothers [of infants and young children].”²⁷ The African Committee on the Rights and Welfare of the Child then reminds that the word “Mother” should also be expanded include “a “father” and any “caregiver””.²⁸

A violation of the principle of non-separation of children and parents

The CRC stipulates in article 9(3) that the separation of a child from his/her parents shall not prevent them from “[maintaining] personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests”.²⁹ Unfortunately, this right is not always upheld for children with a parent in prison where restrictions on contact and communication can infringe on children’s rights to maintain contact with their parent particularly if that individual is on death row where security in many countries is heightened.

A violation of the principle of non-discrimination

The principle of non-discrimination is protected under article 2 of the CRC and all other core human rights treaties. It is unequivocal that States party to the Convention must “respect and ensure the rights set forth in the [...] Convention [...] without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”³⁰. As a QUNO report points out, the term “other status” pertains to every situation an individual is not able to change, or that he should not be forced to do so, in order to avoid being discriminated against.³¹ In other words, article 2(2) may refer to the specific situation of a child who has a parent has been sentenced to death or has been executed – and therefore such a situation should not prevent a child from fully enjoying the rights provided for by the CRC.

The death penalty “disproportionately affects the poor and people belonging to ethnic, racial and religious minorities” as highlighted, among others³², by the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais.³³ As a result “[c]hildren whose parents have been sentenced to death may thus face multiple discriminations” she also noted.³⁴ Sentencing an individual to death often causes stigmatization of loved ones, for instance his/her family, and their children. This stigma on children makes it more difficult for them to find “alternative caregivers”.³⁵ When a parent receives a death sentence, children may go through very difficult social, economic and psychological States of insecurity. It may have several repercussions on the ability to enjoy other rights.

²⁷ Ibid., article 30.

²⁸ African Committee of Experts on the Rights of and Welfare of the Child, 2013, General Comment No. 1 on article 30 of the Africa Charter on the Rights and Welfare of the Child, ACERWC/GC/01, para. 13.1.

²⁹ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 9(3).

³⁰ Ibid., article 2(2).

³¹ Stephanie Farior, 2019, *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, page 24.

³² See also Human Rights Council, 2017, Resolution 36/17, The question of the death penalty, A/HRC/RES/36/17.

³³ Marta Santos Pais, “Introductory Essay of the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais” in Office for Democratic Institutions and Human Rights, 2017, *The Death Penalty in the OSCE Area*, Organization for Security and Cooperation in Europe, page 7.

³⁴ Ibid., page 7.

³⁵ Ibid., page 8.

A violation of the right to information

Article 13 of the CRC protects the right to information defined as the “freedom to seek, receive and impart information and ideas of all kinds”.³⁶ The definition is very similar to the one given by the ICCPR³⁷ which the Human Rights Committee understands to include information “held by a public body, regardless of the form in which the information is stored.”³⁸

The right to information requires that family members be informed of the place and date of the execution and/or of the place of burial. The Committee Against Torture has at several times expressed its concerns about the lack of information of the execution of individuals shared in Belarus³⁹, Japan⁴⁰, Mongolia⁴¹ or Uzbekistan.⁴² This includes provision of information to children unless, as Stated in the CRC article 9(4) that “the provision of the information (...) would be detrimental to the well-being of the child”.⁴³ The violation of the right to information may be considered, in a wider perspective, as a form of torture to which the child of a parent sentenced to death is also subjected.

A violation of the right to not be subjected to torture and other cruel, inhuman and degrading treatment

Article 9(4) of the CRC guarantees the child a right to be informed by the State of the location of their parent from whom they are separated where incarceration is the reason for separation. The same right to information applies if a parent dies or is killed “from any cause while the person is in the custody of the State”⁴⁴ and, indeed, the case of a death sentenced being carried out.

In spite of these legal guarantees, in some countries the date and place of the execution, as well of the place of burial, is not shared with the family. This is particularly the case in countries in which the death penalty is a State secret. The stress and the anguish it may cause has been recognized as a violation of article 7 of the International Covenant on Civil and Political Rights (ICCPR) according to which “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.⁴⁵ For instance, the Human Rights Committee recognized that a woman was “too [...] a victim of the violations of the CRC in particular, of article 7” due to “the anguish and stress caused [...] by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts”.⁴⁶ Similarly the CRC stipulates in article 37 that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.⁴⁷

³⁶ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 13(1).

³⁷ United Nations General Assembly, 1966, International Covenant on Civil and Political Rights, article 19.

³⁸ Human Rights Committee, 2011, General Comment No. 34 on article 19 of the International Covenant on Civil and Political Rights, on the Freedoms of opinion and expression, CCPR/C/GC/34, para. 18.

³⁹ Id., 2011, Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture. Belarus, CAT/C/BLR/CO/4, para. 27.

⁴⁰ Id. 2013, Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/JPN/CO/2, para. 15(a).

⁴¹ Id., 2011, Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture. Mongolia, CAT/C/MNG/CO/1, para. 19.

⁴² Id., 2007, Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture. Uzbekistan, CAT/C/UZB/CO/3, para. 26.

⁴³ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 9-4.

⁴⁴ Ibid., article 9-4.

⁴⁵ United Nations General Assembly, 1966, International Covenant on Civil and Political Rights article 7.

⁴⁶ Committee on Human Rights, María del Carmen Almeida de Quinteros et al. v. Uruguay, Communication n°107/1981, UN Doc. CCPR/C/OP/2 at 138, para. 14.

⁴⁷ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 37(a).

A violation of the right to health

According to the preamble of the Constitution of the World Health Organization, health does not only refer to a single medical point of view but, in a wider definition, to “a State of complete physical, mental and social well-being”.⁴⁸ The right to health is additionally protected by article 24 of the CRC. The latter stipulates that every child has the right to “[enjoy] the highest attainable standard of health”⁴⁹ – States Parties have to “pursue [its] full implementation”⁵⁰ which is “indispensable for the enjoyment of all the other rights in the Convention”.⁵¹

Nonetheless, the right to health is heavily impacted by the death penalty. Some children whose parents are under a death sentence have post-traumatic stress disorders as QUNO highlights in its 2014 report.⁵²

A violation of the right to education

The right to education is guaranteed in article 28 of the CRC. Children with a parent sentenced to death or executed face violations of this right in two main ways. Firstly, as a result of discrimination, the stigmatization and the marginalization that children of a parent under a death sentence may go through – and that has the potential drive them out from school. Secondly due to the emotional distress that affects a child with a parent waiting on death row that may interfere with their ability to learn.⁵³

Every element explained above shows to what extent the death penalty affects international human rights standards and notably human rights of the child. It is a deep and strong violation of the child’s best interests in spite of the general call to States to defend them by assessing the potential effects of each decision – including the decision to hand down a death sentence to a parent.

⁴⁸ International Health Conference, 1946, Constitution of the World Health Organization, para. 1 of the Preamble.

⁴⁹ United Nations General Assembly, 1989, Convention on the Rights of the Child, article 24(1).

⁵⁰ *Ibid.*, article 24(2).

⁵¹ Committee on the Rights of the Child, 2013, General Comment No.15 on article 24 of the Convention on the Rights of the Child, on the right of the child to the enjoyment of the highest attainable standard of health, CRC/C/GC/15, para. II(A).

⁵² Olivier Robertson et Rachel Brett, 2013, *op. cit.*, page 5.

⁵³ Stephanie Farrow, 2019, *op. cit.*, page 26.

II. Being the child of a parent sentenced to death or executed: Wellbeing of the child

The situation of children of a parent sentenced to death or executed has raised many concerns from different United Nation human rights mechanisms:

- The Committee on the Rights of the Child « enquired (...) what measures were taken on behalf of children whose parents had been incarcerated or executed »⁵⁴
- The Human Rights Committee reminds that « States parties must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as [...] parents to very young or dependent children »⁵⁵
- The Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, denounces that “[c]hildren of parents sentenced to death often suffer a particularly devastating ordeal”. Citing the conclusions of the Working Group on Children of Incarcerated Parents, she also mentioned that “some children even present post-traumatic stress disorder symptoms.”⁵⁶

Sentencing a parent to death may provoke a wild range of psychological (fear and/or anger, embarrassment, loss of self-esteem, eating and/or sleeping disorders, deliria, post-traumatic stress)⁵⁷, and behavioral reactions (loss of interest for playing and/or for school, self-inflicted violence, self-exclusion, etc).⁵⁸ Children of parents sentenced to death are more likely to be engaged in alcohol consumption or to adopt a criminal behavior.⁵⁹ QUNO suggests that the absence of overt troubles can in reality hide their difficulty in expressing their feelings, which can lead to a delay providing urgent care.⁶⁰ The death of a parent resulting from an execution is “particularly confusing and frightening for a child” as he/she may find “it hard to understand and explain their situation and are increasingly tempted to deny it and hide their feelings”.⁶¹

However, the reactions of a child can change according to different criteria. For instance, criteria that related to the situation of a particular child (like the age or the sex) or to her/his environment (like her/his family). Other criteria can be external to the child, for example anomalies related to the specific judicial system that handed down the death sentence

⁵⁴ Committee on the Rights of the Child, Summary record of the 1820th meeting. Consideration of reports of States parties (continued). Second periodic report of Kuwait (continued), CRC/C/SR.1820, para. 42.

⁵⁵ Human Rights Committee, 2018, General Comment No. 36 on article 6 23 of the International Covenant on Civil and Political Rights on the Rights of the Child, CCPR/C/GC/36, para. 60.

⁵⁶ Human Rights Council, 2015, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/29/26, para. 77.

⁵⁷ Francis Ssubi, 2016, « The Impact of the Death Penalty on the children with a parent on death row or executed », in United Nations High Commissioner for Human Rights, 2016, *Death Penalty and the Victims*, pages 238 and 247.

⁵⁸ Olivier Robertson et Rachel Brett, 2013, op. cit., page 5.

⁵⁹ Susan F. Sharp, 2005, *Hidden Victims: The Effects of the Death Penalty on Families of the Accused*, Rutgers University Press.

⁶⁰ Olivier Robertson et Rachel Brett, 2013, op. cit., page 5.

⁶¹ Marta Santos Pais, op. cit., in Office for Democratic Institutions and Human Rights, 2017, op. cit., page 7.

Therefore, reactions to the death sentence of a parent can greatly differ depending on the age range of the child (see table 2)⁶².

Given a different gender socialization of boys and girls, reactions to the death sentence of a parent can also differ depending on the sex of the child. After a death sentence, girls are more likely to be exposed to risks of abuse when a major caregiver is missing. On the other hand, boys can meet two different contrary effects. They may first experience a surge of attention from their family which may help to continue their studies, but they may also be forced to fulfill their new social function of “breadwinner” which may prevent them from continuing their studies.⁶³

Family also have a crucial role to play. Focusing almost all their resources and energy on it’s the person who has been sentenced to death, can result in involuntary neglect the child⁶⁴. Following an arrest, children “may need immediate alternative care arrangements”.⁶⁵

Table 2: Potential Variety of reactions to sentencing of a parent to death according to age

Years Old	Reactions
0 – 2	Loss of Emotional Bonding
3 – 6	Anxiety
7 – 10	Weakening of resilience capacity
11 – 14	Refusal to impose limits on themselves
15 – 18	Transition to crime

Finally, criminal proceedings may affect the way the child learns about their parent's death sentence. Long and uncertain criminal proceedings can delay the time of conviction and/or execution thus causing the child to experience protracted stress or anxiety with peaks at key moments.⁶⁶ The child may also be involved in the criminal procedures, for instance as a witness– it can be particularly demanding and if the child has to testify against her/his parent and can cause feelings of guilt for their conviction and sentence.⁶⁷ In general, the effects of the death sentence on a child's well-being can be summarized by dividing the procedure into five main successive phases: the arrest of the parent; the trial and awaiting trial; the death sentence; the period of incarceration on death row; and the execution.

The World Coalition Against the Death Penalty advocates for the universal and unconditional abolition of the death penalty and defends the promotion of alternative sanctions. No death penalty, under any circumstances, can be a humane punishment. Striving for the complete abolition of the death penalty also means we cannot ignore the damaging effects suffered by children during the sentencing and, potential, execution of a parent. During the following phases, there is work that may be done to mitigate these effects while working towards total abolition.

⁶² Olivier Robertson et Rachel Brett, 2013, op. cit., pages 5-6.
⁶³ Ibid., page 6.
⁶⁴ Ibid., page 7.
⁶⁵ Ibid., page 10.
⁶⁶ Ibid., page 6-7.
⁶⁷ Ibid., page 44.

Arrest

Crimes sentenced to death are, as a general rule, among the most "violent". In fact, the arrest of a person facing the death penalty is likely to be in turn more violent⁶⁸, which can generate in the child, when he or she witnesses it, concerns or even desires for revenge.⁶⁹ During the arrest phase, the child may also be subjected to violence from the victim's relatives, through repercussions (which will continue, later, in stigmatization effects).⁷⁰

Better training of police officers (who may have to address children⁷¹) and the professionals in the media (who may end up covering the event, and (un)intentionally painting the parent in a bad light that can aggravate the situation children⁷²) can help reduce the impact felt by children.

Trial

In the period leading up to the trial children may experience many feelings of uncertainty, anxiety and stress about the future of the parent in question. This situation can compromise the socialization of a child (by being "very defensive at school" for instance⁷³). This initial phase of social interaction and communication is traditionally seen as one of the more intense stage of socialization the child can experience, particularly if he/ she is still very young. This risk may also be exacerbated by a lack of communication between the perpetrator's family and the victim's family.

The trial itself can be a difficult ordeal to overcome. For example, the child may not have all of the tools necessary to comprehend the situation. Impeded comprehension can depend on his/her age (if too young), the language used (which may be different from his or her first language) or the legal vocabulary used (which is often technical)⁷⁴. The death sentence of a parent can reduce the trust that the child had previously placed in the State and replace any sense of security with a sense of anger towards the parent⁷⁵. The moment to testify is a daunting task. It can exacerbate feelings of stress and compound them with feelings of doubt and guilt if the parent then received the death sentence⁷⁶.

QUINO encourages « *reaching out between families* »⁷⁷ in the form of formal or informal exchanges, at the initiative of families or third parties. These good practices are based on research in restorative justice⁷⁸ whose principle is to repair harm, rather than punish an offence, and can help children manage the "distrust and trauma" they may experience.⁷⁹

⁶⁸ Ibid., page 10.

⁶⁹ Ibid., page 10.

⁷⁰ Ibid., page 11.

⁷¹ Ibid., page 12.

⁷² Ibid., page 11.

⁷³ Ibid., page 12.

⁷⁴ Ibid., page 15.

⁷⁵ Sandra Joy, 2014, *Grief, Loss, and Treatment for Death Row Families: Forgotten No More*, Lexington Books.

⁷⁶ Ibid., page 15.

⁷⁷ Ibid., page 13.

⁷⁸ See for instance Elizabeth Beck, Sarah Burtoo et Arlene Andrews, 2007, *In the Shadow of Death: Restorative Justice and Death Row Families*, Oxford University Press, mentioned in: *ibid.*, page 13.

⁷⁹ Ibid., page 13.

Sentencing

The death sentence for a parent is a source of acute anxiety for the child. This feeling can be accentuated by the delay between the sentencing itself and the execution. For this reason, some norms of international law, which have already been introduced in Part I, provide for adjustments when sentencing a parent of young children, such as the African Charter on the Rights and Welfare of the Child, which is a reference in this field.⁸⁰

The jurisprudence of the CRC enshrines the primacy of the best interests of the child in all decision-making. The Committee recalls that “viewing the best interests of the child as ‘primary’ requires a consciousness about the place that children’s interests must occupy in all actions (...) especially when an action has an undeniable impact on the children concerned.”⁸¹

The Committee on the rights of the child recommends as well that each decision must be explained in the manner which the right of the child was addressed and “may not be considered on the same level as all other considerations.”⁸² Decision-making must take place within the framework of formal mechanisms that respect the principles of transparency and objectivity; decisions “must be motivated, justified, and explained”⁸³ and should indicate the “all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child’s best interests.”⁸⁴

Death Row

The term "death row" refers to the section of a prison facility reserved for the detention of persons sentenced to death. Conditions of detention are usually stricter and more restrictive on death rows as they are generally located in maximum security areas.⁸⁵ It is to be noted that not every country has a separate death row for those who have been sentenced to death. In such cases, many times, those who are sentenced to death are housed with other individuals serving different sentences.

In practice, visiting rights on death rows are frequently limited,⁸⁶ which is detrimental to the principle of non-separation of children and parents as protected by the Convention on the Rights of the Child and, as such, on the well-being of the child. However, when visits are possible, they may be subject to special precautionary measures: searches, prohibition of any physical contact⁸⁷, presence of a supervisor, etc.⁸⁸ Visiting a relative incarcerated on death row can be a source of stigmatization itself, due to the feeling of shame, the judgement of third parties, or sometimes the obligation for people visiting a death row inmate to wear a distinctive sign⁸⁹.

⁸⁰ African Committee of Experts on the Rights of and Welfare of the Child, 2013, General Comment No. 1 on article 30 of the Africa Charter on the Rights and Welfare of the Child, ACERWC/GC/01, para. 13.1.

⁸¹ Committee on the Rights of the Child, 2013, General Comment No. 14 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), CRC/C/GC/14, para. 40.

⁸² *Ibid.*, para. 6(c)

⁸³ *Ibid.*, para. 97.

⁸⁴ *Ibid.*, para. 97.

⁸⁵ Olivier Robertson et Rachel Brett, 2013, *op. cit.*, page 19.

⁸⁶ *Ibid.*, pages 19-20.

⁸⁷ *Ibid.*, page 22.

⁸⁸ *Ibid.*, page 20.

⁸⁹ *Ibid.*, page 21.

In addition, there are additional difficulties specific to the child; minors are frequently required to be accompanied when visiting⁹⁰ which may not always be possible.

Execution

In certain countries, families are not always notified that the execution of their loved one has been carried out, which, in addition to constituting a violation of the right to information, can generate uncertainty for his relatives. When the execution is announced, there may be the occasion for a final visit. However, for certain disciplinary reasons, the final visit may be suspended.

Concerning the presence of children during execution itself, there can be numerous outcomes: their absence may cause a strong feeling of remorse; their presence may cause a strong feeling of stress, which may be prolonged in the long term. A study conducted on a panel of 200 children aged 7 to 11 years who attended public executions in Iran revealed that more than half of the children (52%) had post-traumatic stress disorder symptoms, and more than one-tenth (12%) had chronic symptoms.⁹¹

Table 3 – Cases of children whose parents were sentenced to death or executed abroad

Special mention should be made of children whose parents have been sentenced to death or executed abroad and whose impacts may be made more considerable by distance. Some States have introduced into their legislation instruments to deal with these particular situations. Examples include, but are not limited to⁹² :

Hungary

A decree on guardianship authorities, child protection and guardianship procedures entrusted to the Department of Child Protection, Ministry of Human Capacities, with the responsibility of ensuring the protection, repatriation and custody of children whose parents have been sentenced to death;

Turkey

The International Social Services Unit of the Ministry of Family and Social Policy is responsible for managing the social and/or familial problems encountered by Turkish citizens abroad. The rights of Turkish children abroad are guaranteed on an equal footing with those of Turkish children living in Turkey. Additional measures may also be considered in cases where parents can no longer assume their responsibility under the Youth Protection Act.

⁹⁰ Ibid., page 20.

⁹¹ Abbas Attari, Saideh Dasthi, Masoomeh Mahmoudi, 2006, « Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran », *La Revue de Santé de Méditerranée orientale*, vol. 12, n°1/2 : 72-80, page 74.

⁹² Office for Democratic Institutions and Human Rights, 2017, *The Death Penalty in the OSCE Area*, Organization for Security and Cooperation in Europe, page 21-22 (traduit de l'anglais).

III. The rights of children of parents sentenced to death or executed in the face of penal populism

The term penal populism refers to attempts by political leaders from opposing parties to compete to be seen as toughest on crime. This rhetorical technique is hostile to the perpetrators of criminal acts - and by extension, to their families and friends. The death penalty can be used as a tool in this rhetorical technique and those who are sentenced to death pay the price; the children of those who are sentenced to death or who are executed also pay the price of this tactic. Indeed, the focus of the 2019 World Day lends itself to these secondary issues and opens the debate to the prospect of a justice system that is more respectful of human dignity. Above all, it reminds us that the abolition of the death penalty is not only in the interests of convicted persons, but also in the interests of victims - not all of whom defend the death penalty.

By focusing on their rights, the 17th World Day against the Death Penalty aims to give a voice to the children of people sentenced to death, but also to recognize their status as victims, forgotten, silent and invisible. But these children are not the only ones affected by the death penalty: the children of victims are also affected by an unjust and inhuman punishment. For them, the death penalty is not a solution to their pain, it plunges them into a cycle of violence in which the death of the person or persons responsible is the only legitimate reaction. The protection of the rights of children of parents sentenced to death does not seek to minimize the legitimate pain of children of victims. Both sets of children are rights holders and both warrant our care and attention. There is no need to balance the rights of these two sets of children, their needs are rights are not mutually exclusive. Rights and empathy need not be seen as finite commodities in which upholding the rights of one group results in a downgrading of rights protection for the other group. Indeed, when an individual is sentenced to death, his family is rarely a source of concern.⁹³ Children whose parents have been sentenced to death have a difficult experience to live through, for which they have little to compare. In societies with rampant penal populism, their grief is sometimes socially devalued, even delegitimized. Mourning is also experienced very early, while the parent is still alive, but everything suggests that they are already lost forever.⁹⁴

Work on "restorative justice" can be an important resource for addressing these related issues. It also allows victims of the crime to be included. It is a complementary means to traditional criminal justice whose "main tool[...] is dialogue between those who caused the harm and those who suffered it".⁹⁵ Other people can be invited to participate such as families, or even children depending on their age. QUNO, for example, suggests "building bridges"⁹⁶ between different families. These dialogue mechanisms can help to calm conflicting relationships that affect the children of parents sentenced to death - and thus show that they are invisible victims of the death penalty. The introduction of restorative justice principles, for example, was encouraged after the 1995 Oklahoma City bombing, in which one of the two leaders was sentenced to death.⁹⁷

This idea is favorably received by some victims of crime as the death penalty often fails to meet their needs for information, explanations and being heard.⁹⁸ More and more victims are

⁹³ Susan F. Sharp, « Hidden victims: the families of those facing the death penalty », in United Nations High Commissioner for Human Rights, 2016, op. cit., page 222.

⁹⁴ Ibid, page 226.

⁹⁵ See in French: Jacques Faget, 2006, « Reintegrative shaming. À propos de la théorie de John Braithwaite », Les Cahiers de la justice, n°1, « "Justice restaurative" et victimes » : 59-70.

⁹⁶ Mickell Branham et Richard Burr, 2008, « Understanding Defense-Initiated Victim Outreach and Why It Is Essential in Defending a Capital Client », Hofstra Law Review, mentioned in: Mickell Branham, « Listening to victims », in United Nations High Commissioner for Human Rights, 2016, op. cit, page 50.

⁹⁷ Ibid., page 51.

⁹⁸ Ibid., page 52.

asking to be able to exchange with the accused person.⁹⁹ Addressing these issues gradually dispels the myth that the death penalty is an opportunity for "relief" for victims or their relatives by providing them with the means to "turn the page". Jody L. Maida categorically describes this myth as a "trap", whose instrumentalization - in order to legitimize the death penalty - ultimately undermines their own dignity.¹⁰⁰ More broadly, it makes it possible to break with the more spontaneously accepted idea that victims defend the death penalty.

The theme of the 17th World Day, because it covers a range of issues on the profound effects of the death penalty on all children, highlights how invisible they usually are. This focus implies giving them the attention they deserve, regardless of their status, or the status of their parent; meeting their needs in order to provide them with the full means for their development - in short, listening to them and giving them a voice.

"It is easier to build strong children than to repair broken men"

– Frederick Douglass (1818-1925)

General recommendations

Other recommendations can also be encouraged in the last 56 retentionist countries¹⁰¹, at different levels: governments, parliamentarians and prosecutors.

With Governments

- χ Abolish the death penalty or at least establish a moratorium on the use of the death penalty on parents of children as a first step to the finale abolition.
- χ Suspend the mandatory nature of the death penalty.
- χ "Ensure a protective environment for children whose parents have been sentenced to death or executed and thus protect them from discrimination and stigmatization, as well as provide them with assistance for their recovery and reintegration. "in accordance with the recommendations of the Human Rights Council.
- χ Develop support and advice programmes.
- χ Improving access to education

⁹⁹ Ibid., page 52.

¹⁰⁰ Jody L. Madeira, « Listening to victims », in United Nations High Commissioner for Human Rights, 2016, *op. cit.*, page 66.

¹⁰¹ Amnesty International, 10 april 2019, *op. cit.*, page 48.

With Legislators

- χ Amend and repeal laws in favour of the application of the death penalty
- χ Pass laws that promote better respect for children's rights

With Prosecutors

- χ Favor options that allow alternatives to the death penalty
- χ Limiting the use of the death penalty

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. It was founded as a result of the commitment made by the signatories of the Final Declaration of the 1st World Congress Against the Death Penalty organised by the French NGO Together Against the Death Penalty (ECPM) in Strasbourg in June 2001.



The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The WCADP is striving to achieve these by lobbying international organisations and States, organising international events, and facilitating the creation and development of national and regional coalitions against the death penalty. Since 2003, the WCADP has made 10 October the World Day against the Death Penalty.

World Coalition Against the Death Penalty

Mundo-M • 47 avenue Pasteur • 93100 Montreuil • France
+33 (0) 1 87 70 43 • contact@worldcoalition.org

www.worldcoalition.org