



Children: unseen victims of the death penalty

Why this matters: the impact of the parental death sentence on children

The psychological and emotional trauma experienced by a child when their parent is sentenced to death or executed is well-evidenced to have long term and often devastating impacts. This trauma can occur at any and all stages of the capital punishment of a parent, from arrest through to the aftermath of execution, and the effects manifest in differing ways depending on circumstances like gender and age, and the broader familial and community reaction to the situation. Children are commonly found to suffer physical symptoms like loss of concentration, loss of appetite and insomnia, and typical behavioural reactions include anger, low self-esteem, and violence, including to themselves. Severe mental health problems, including delusional beliefs and post-traumatic stress disorder, can occur, as well as the development of alcohol or drug dependencies, or involvement in criminal activity.¹ The cycles of hope and disappointment during appeals processes, and the repeated need to anticipate and prepare for the possible execution, can be highly emotionally distressing. The impact on the child is often long term, whether or not the parent is eventually executed. The stigma surrounding the death penalty, especially with cases that garner notoriety and press scrutiny, can increase confusion for the child. They may find it challenging to hold feelings of love for a parent when those feelings are shown to conflict with the public opinion of their parent's actions, and the State's belief that those actions warrant their death.

As a legislator, you can uphold the obligation to respect the human rights of children in law, including those of the children of parents sentenced to death or executed, by ensuring a child rights impact assessment is conducted in relation to your State's current use of the death penalty, and by establishing processes that ensure current and future legislation in relation to the death penalty does not infringe on a child's human rights.

What does international law say?

The UN Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights, has said: “States parties... should...refrain from executing parents to very young or dependent children.”² This creates a presumption against the execution of those with dependent children.

A central principle in the Convention on the Rights of the Child is that the best interests of the child must be a primary consideration ‘in all actions concerning children’.³ This includes children who are ‘affected by the situation of their parents in conflict with the law’⁴, such as in the sentencing to death or execution of a parent.

The UN Committee on the Rights of the Child stipulates in its General Comment on the best interests of the child that ‘States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children’.⁵ Since the death penalty directly affects the children of those sentenced to death, this requirement applies to decisions by legislators regarding laws that relate to the death penalty. The Committee has pointed out that ‘ensuring that the best interests of the child are a primary consideration in legislation and policy development’ requires States to conduct a ‘child rights impact evaluation’ in order to ‘evaluate the actual impact of implementation’ of legislation and policies.⁶ Thus, any State with a law or policy allowing the death penalty must conduct an evaluation of the impact of such law or policy on children of parents sentenced to death or executed.

Further detail and sources can be found in *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis* by Stephanie Farrior.⁷

As a legislator, what can you do?

- Conduct a child rights impact evaluation of the actual impact of the implementation of current legislation and policies in your State related to the death penalty, to assess the impact on children of parental death penalty. Consider all aspects of children's rights in this evaluation, including the right to be free from inhuman treatment, and the rights to health, education, and an adequate standard of living. Engage in thorough communication with children to facilitate their meaningful participation in this process, and to identify their best interests, using child-friendly procedural safeguards.
- Develop transparent and objective processes for legislative decisions made concerning the death penalty to ensure full consideration and respect of the human rights of children.
- Enact legislation that requires in law the detailed procedural steps for conducting a best interests of the child assessment as set out in the UN Committee on the Rights of the Child's General Comment on the best interests of the child⁸, and include a provision explicitly requiring that such an assessment be conducted before any sentencing decision is made that impacts a child. Ensure that all the procedural requirements set out in this legislation are disseminated to both prosecutors and sentencing authorities.
- Enact into legislation the requirement that all State actors whose actions impact the children of parents sentenced to death or executed be educated about the impact of the parental death penalty on children, and the international legal standards that protect the child's best interests. Stipulate in legislation that those who shall receive such education includes judges and law clerks, prison and death row guards, court room and other administrative staff, and any medical or social service personnel who may be called upon in making a sentencing decision.
- Support the campaign for the abolition of the death penalty. If your country applies a moratorium on execution, stress the need to move from moratorium to abolition, to prevent the distress endured by children who fear that the moratorium could be lifted and their parent executed.

Endnotes

- 1 For a compilation of research on the effects of the parental death sentence on children, please see Brett, Rachel, Robertson, Oliver (2013), 'Lightening the Load of the Parental Death Sentence on Children' (Quaker United Nations Office, Geneva). Available at: quano.org/resource/2013/6/lightening-load-parental-death-sentence-children
- 2 UN Human Rights Committee, General Comment No.36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (2018), para.49
- 3 The Convention on the Rights of the Child, article 3 (1990)
- 4 UN Committee on the Rights of the Child, General Comment No.14 in the right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14 (2013) (para.28). All but one State has ratified the Convention on the Rights of the Child, and are all therefore bound to the best interests of the child principle. The United States has signed but not ratified the treaty; there are nevertheless cases in which the CRC has been used effectively in US courts in the defence of children's rights
- 5 UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14 (2013), (para.87)
- 6 Ibid
- 7 Stephanie Farrior (2019), Protection of the Rights of Children of Parents Sentenced to Death or Executed: A Legal Analysis (Quaker United Nations Office, Geneva). Available at: quano.org/resource/2019/2/protection-rights-children-parents-sentenced-death-or-executed-expert-legal-analysis
- 8 UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14 (2013), paras. 46-99