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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2019]

* Issued as received, in the language(s) of submission only.



Written Statement in Relation to the High Level Panel on the Death Penalty: The sentencing to death or execution of a parent is a violation of the best interests of the child principle, including under the prohibition of discrimination

Friends World Committee for Consultation (Quakers) considers that the sentencing to death or execution of a parent amounts to a violation of the best interests of the child principle, as well as a violation of the right to non-discrimination.

This statement will demonstrate how the mandatory sentencing to death or execution of a parent amounts to a violation of the best interests of the child principle as recognised under international human rights law. Further, under the obligation to carry out a best interests of the child assessment, as outlined in General Comment No.14 of the UN Committee on the Rights of the Child, it is also evident that any sentencing to death or execution of a parent will almost always be found to be not in the best interests of the child.

Moreover, this statement will highlight how the stigma that is typically endured by a child when a parent is sentenced to death or executed can constitute a violation of the prohibition of discrimination, as outlined in article 2 of the Convention on the Rights of the Child.

This written statement draws on the research and analysis presented by Stephane Farrior in *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*¹.

The impact on the child: a brief summary

The devastating long term psychological and emotional impacts on the child of a parent who is sentenced to death or executed are well-evidenced. They include anger issues, insomnia, loss of appetite and increased risk of depression, anxiety and post-traumatic stress disorder.² A child's trauma can occur at any stage of the capital punishment process of a parent: arrest, trial, sentencing, death row, stays, execution dates, the execution itself, and its aftermath. Furthermore, the child's experience of the death sentence or execution can undermine their sense of trust in the State, replacing feelings of security and safety with anger.³ These children are more likely to engage in criminal behaviour later in life and to turn to alcohol or drugs to cope with the stress and trauma.⁴ Some children feel pressured to become the economic breadwinner of the family, and girls in particular are at an increased risk of sexual violence.⁵

As the UN Special Representative of the Secretary-General on Violence against Children has stated, when the death of a parent 'is officially performed by the authorities of a country

¹ 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 online <https://quno.org/resources/Children-of-Prisoners>

² F. Ssuubi, 'The impact of the Death Penalty on the children with a parent on death row or executed', in United Nations Office of the High Commissioner for Human Rights, *Death Penalty and the Victims* (New York, 2016). Available online: https://gallery.mailchimp.com/2c1ef9c8c05538c35c9ad6f64/files/DP_Victims_WEB.01.pdf; Oliver Robertson and Rachel Brett, 'Lightening the Load of the Parental Death Penalty on Children' (QUNO 2013). Available online: http://www.quno.org/sites/default/files/resources/Lightening%20the%20Load.Web_.EN_.pdf

³ S. Joy, *Grief, Loss and Treatment for Death Row Families*, (2014), Lexington Books, Plymouth

⁴ S. Sharp, *Hidden Victims: The Effects of the Death Penalty on Families of the Accused* (2005), Rutgers University Press

⁵ Introductory Essay of the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, in OSCE Office for Democratic Institutions and Human Rights (ODIHR), *The Death Penalty in the OSCE Area*, Background Paper 2017, Special Focus: Children of Parents Sentenced to Death or Executed, p.6

it becomes particularly confusing and frightening for a child...Children whose parents are facing the death penalty may feel anger and a deep sense of uncertainty...Overall, children often endure this experience in deep loneliness and hopelessness'⁶. In short, the sentencing to death or execution of a parent is proven to be a deeply traumatic experience, and in most cases will constitute an infringement on the human rights of the child.

Sentencing to death or execution of a parent: Not in the best interests of the child

It is well established in international human rights law that the best interests of the child shall be a or the primary consideration in all actions taken by a government concerning children, including the sentencing to death or execution of parents. In the Convention on the Rights of the Child in Article 3 it declares that 'in all actions concerning children...the best interests of the child shall be a primary consideration'⁷.

In the case of parents sentenced to death or executed, the measures States should take to meet their obligations regarding the best interests of the child are set forth in General Comment No.14 of the Committee on the Rights of the Child⁸. The General Comment lays out the steps to be taken to carry out a best interest assessment. This applies to children whose parent is facing a capital sentence or execution. The General Comment states that 'the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned' (para.6(c)), including a consideration of the child's views; preservation of the family environment and maintaining relations; the care, protection and safety of the child; the situation of vulnerability of the child; the child's right to health; and the child's right to education (para.52-79).

In other words, the General Comment affirms that there is a legal obligation whenever a decision is made to sentence a parent to death, or to execute a parent, that the State must evaluate the impact of this decision on the child or children concerned.

It is clear, therefore, that the mandatory death penalty is incompatible with the best interests principle, as a mandatory death sentence precludes an assessment of the best interests of any children of the person being sentenced. Furthermore, given the severely negative impact the child experiences as a result of a parent being sentenced to death or executed (outlined above) it is evident that a death sentence or execution of a parent of a child can never be justified when a assessment of the best interest of the child is undertaken.

The prohibition of discrimination and the stigma of parental sentencing to death or execution experienced by children

The right to non-discrimination lies at the heart of international human rights law. As the UN Special Representative of the Secretary-General on Violence against Children has said, 'the penalty disproportionately affects the poor and people belonging to ethnic, racial and religious minorities. Children whose parents have been sentenced to death may thus face multiple discriminations'⁹. As it is often the case that the death penalty is imposed in a discriminatory manner, the children of those sentenced to death or executed become indirect victims of this discrimination.

⁶ Ibid

⁷ Vienna Declaration, World Conference on Human Rights, UN Doc. A/CONF.157/24 (1993)

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 (Art.3, para.1), UN Doc. CRC/C/GC/14 (2013)

⁹ Introductory Essay of the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, in OSCE Office for Democratic Institutions and Human Rights (ODIHR), The Death Penalty in the OSCE Area, Background Paper 2017, Special Focus: Children of Parents Sentenced to Death or Executed, p.6

The UN Committee on the Rights of the Child has recognised that ‘discrimination related to...personal circumstances...excludes children from full participation in society...It affects children’s opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults’¹⁰. The prohibited grounds of discrimination outlined in article 2 of the Convention on the Rights of the Child include ‘birth or other status’. ‘Other status’ here includes the status of being the child of someone sentenced to death or executed. In addition to bearing the consequence of discrimination in the application of the death penalty to a parent by virtue of losing that parent, the stigma experienced by children of parents sentenced to death or executed leads in many instances to further discrimination against them, such as ostracisation and lack of familial unity.

As the UN Special Representative of the Secretary-General on Violence against Children has expressed, ‘the serious stigma associated with people sentenced to death often makes it difficult to find alternative caregivers for the child. This further exacerbates the pain and in turn, increases the risk of becoming homeless and ending up living on the street, at risk of violence and exploitation, and manipulated into crime’¹¹. The experience of having a parent sentenced to death or executed can create a spiral of discrimination that fundamentally undermines many or all of the child’s human rights, including their right to health, and their right to education. These are yet more reasons why it is never in the best interests of a child to sentence to death or execute parent.

Conclusion

The importance of preventing discrimination against children on any of the protected grounds, and the application of the best interest of the child principle, lead to a conclusion that States retaining the death penalty should refrain from imposing it on a parent. It is clear that the sentencing to death or execution of a parent will never be in the best interests of a child, a primary consideration that States are obligated to respect when making decisions that impact children.

Recommendations for States

To avoid the extreme suffering experienced by children when a parent is sentenced to death or executed, States should avoid seeking and imposing the death penalty on the parent.

In States that retain the death penalty, States should impose a moratorium on the imposition of death sentences and the carrying out of executions on the parent of a child.

States should never allow the death penalty to be mandatory in sentencing the parent of a child, as a mandatory death sentence precludes an assessment of the best interests of the child, in violation of the State’s obligation under the Convention on the Rights of the Child.

Before reaching a decision to impose capital punishment on the parent of a child, States should, as part of the duty to treat the best interests of the child as a primary consideration in all actions concerning children, conduct a detailed assessment of the impact on the child of such a decision, following each step set out in the General Comment on the best interests of the child of the Committee on the Rights of the Child.

¹⁰ UN Committee on the Rights of the Child, General Comment No.7, Implementing child rights in early childhood (2005), para.11 (b)(iv)

¹¹ Introductory Essay of the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, in OSCE Office for Democratic Institutions and Human Rights (ODIHR), The Death Penalty in the OSCE Area, Background Paper 2017, Special Focus: Children of Parents Sentenced to Death or Executed, p.6