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Quaker United Nations Office



Can the children of parents sentenced to death or executed be considered victims of torture or cruel, inhuman or degrading treatment?

A written statement submitted to the 34th session of the UN Human Rights Council in February 2017.

Human Rights and Refugees

QUNO's belief in the inherent worth of every individual leads us to work for the promotion and protection of human rights for all. Our Human Rights & Refugees programme raises up the concerns of marginalized groups, so they are better understood by international policy makers, which leads to stronger international standards.

Frontline organizations can use these strengthened international standards as a tool to limit suffering, improve lives and challenge the root causes of injustice. Our work focuses on children of prisoners, children of parents sentenced to death or executed, conscientious objectors to military service, Indigenous peoples and refugees.

QUNO considers that the sentencing to death or execution of a parent leads to a violation of the child's right to be free from cruel, inhuman and degrading treatment (CIDT) or torture.

Impact on children

Human Rights Council resolution 22/11 recognised the negative impact of sentencing to death or executing a parent; in the panel discussion, the Deputy High Commissioner for Human Rights noted that the impact on the child can be so devastating that the child's rights are violated.¹

The devastating psychological and emotional effects on the child are well-evidenced, including insomnia, anger issues, 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 criminal justice system involving the death penalty; arrest, trial, sentencing, death row, stays, execution dates, the execution itself, and its aftermath. Unlike the victim's family, the convicted persons' family's grief is not seen as 'valid' because of the criminal behaviour. Not being able to freely grieve creates a prolonged, hidden and often cyclical grieving process. There may be a

¹ UN Human Rights Council resolution 22/11, Panel on the human rights of children of parents sentenced to the death penalty or executed, A/HRC/22/L.18.

² F. Ssuubi, 'The impact of the Death Penalty on the children with a parent on death row or executed', in Office of the UN 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.

series of execution dates, stays, and prolonged legal proceedings, all of which can compound this confusing sense of loss in anticipation of the event.³ Social stigma and ostracization compound these experiences. The harmful effects on children can extend into their adult lives, affecting their development, learning, social behaviour and capacity for social attachment. Their experience of the death sentence or execution can undermine their sense of trust in the State, replacing feelings of security and safety with anger.⁴ 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.⁵

Children as additional victims

There is increasing recognition that there are other victims of the death penalty aside from the person sentenced or executed, and that children are relevant victims and rights holders in this regard.⁶ Children are inherently more vulnerable to human rights abuses than adults. Children are among the most powerless of all victims of torture. Children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs. In children, ill-treatment may cause even greater or irreversible damage than for adults. Moreover, healthy development can be derailed by excessive or prolonged activation of stress response systems in the body, with damaging long-term effects on learning, behaviour and health. As the Special Rapporteur on torture has highlighted, children that are in ‘critical stages of physical and psychological development [and] may suffer graver consequences than similarly ill-treated adults.’⁷

³ S. Sharp, *Hidden Victims: The Effects of the Death Penalty on Families of the Accused* (2005), Rutgers University Press.

⁴ S. Joy, *Grief, Loss and Treatment for Death Row Families*, (2014), Lexington Books, Plymouth.

⁵ S. Sharp, *Hidden Victims*.

⁶ OHCHR, *Death Penalty and the victims*.

⁷ Commission on Human Rights, *Question of the Human Rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, Special Rapporteur on Torture, A/HRC/28/68, para. 33; Report of the Special Rapporteur on Torture, E/CN.4/1996/35, 9 January 1996, para. 10.

The intention of the perpetrator to harm the victim is a key element of torture. In general the harm caused to children of sentencing to death or executing their parent does not appear to be intentional (although some circumstances do indicate intent to harm not only the person executed, but also their family and contacts)⁸, the child’s vulnerability may itself be enough to raise the severity of the act to a violation of the prohibition of torture or CIDT. The Human Rights Committee and European Court of Human Rights have stated that in assessing CIDT, the age of the victim is important.⁹ The Special Rapporteur on Torture considers that the ‘powerlessness of the victim, as well as their age can be decisive criteria in distinguishing torture from CIDT.’¹⁰ In addition, the Committee Against Torture has implied that when a State agent inflicts pain or suffering or acquiesces in its infliction and is aware that the victim is particularly sensitive, it is possible that acts which would not otherwise reach the threshold of severity to constitute torture may do so.¹¹

Specific death penalty situations

There is robust evidence that in certain death penalty situations the impact on the child can be considered CIDT or torture.

1. Restricting information about a parent’s execution

Secret executions, where the fact and details of the execution are hidden or denied, constitute violations of international human rights law, as recognised in Human Rights Council resolutions 22/11, 19/37 and 30/5 and by the Special Rapporteur on Torture.¹² Failing

⁸ There may be evidence of intention to harm where, for example, information about the execution is purposely restricted from family members.

⁹ *Selmouni v France* (25803/94) [1999] ECHR 66 (28 July 1999) (Application no. 25803/94), Judgment, para.100.

¹⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, UN Doc. E/CN.4/2006/6, para 39.

¹¹ This was implied in *Dzemajl and Others v Yugoslavia*, CAT Communication No. 161/2000, 21 November 2002, §9.2.

¹² Human Rights Council resolution 22/11, Panel on the human rights of children of parents sentenced to the death penalty or executed, A/HRC/22/L.18; Human Rights Council resolution 19/37, Rights of the

to comply with transparency obligations violates the rights of the convict and family members to prepare for the death.¹³ These practices can amount to ‘inhuman and degrading’ treatment to the family members of the person being executed.¹⁴

Whilst there is little research done into the precise impact on the child, research has shown that creating opportunities for family members to grieve is essential for their healing process, and that denial of information on timing of execution and location of the body, as well as access to personal effects, can all add to the unresolved nature of the grief.¹⁵

In 2003, and confirmed in subsequent observations, the Human Rights Committee found that Belarus’ failure to provide the relatives of executed prisoners with information about the execution and burial put the mother of the prisoner in a state of anguish and mental distress that amounted to inhuman treatment (violating Article 7 of the ICCPR.) The Committee concluded that ‘the complete secrecy surrounding the date of the execution, and the place of burial, and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.’¹⁶

2. Witnessing a parent’s execution

Resolution 2005/59 of the Commission on Human Rights states that where capital punishment occurs, it ‘shall be carried out so as to inflict the minimum

possible suffering and shall not be carried out in public or in any other degrading manner.’¹⁷ The Human Rights Committee has also observed that carrying out executions in public is ‘incompatible with human dignity’.¹⁸

Whilst little specific research has been done into the impact on a child of witnessing a parent’s execution, existing studies show that children are significantly affected by observing an execution, displaying symptoms of post-traumatic stress disorder and high levels of stress.¹⁹

There is an emerging norm that the death penalty is incompatible with the prohibition of CIDT and torture.²⁰ If the death penalty itself is considered torture or CIDT, the experience of witnessing this torture may constitute CIDT, with a greater likelihood of a violation for relatives, and especially children. In certain cases, witnessing a relative’s torture has been considered to be a violation of the prohibition of torture or CIDT itself because of the devastating impact on the relative.²¹ The Special Court for Sierra Leone concluded that: ‘a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends.’²²

Child, A/HRC/19/L.31; UN Human Rights Council resolution 30/5, A/HRC/30/L.11/Rev.1; General Assembly, 67th Session, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 9 August 2012, A/67/279, para. 52; Human Rights Committee, Concluding Observations: Japan (2008), CCPR/C/JPN/CO/5, para. 16.

13 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, ‘Transparency and the Imposition of the Death Penalty (2006), E/CN.4/2006/53/Add.3.

14 Ibid; General Assembly, 67th Session, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 9 August 2012, A/67/279, para. 52 & 80c.

15 Robertson and Brett, ‘Lightening the Load’.

16 Natalia Schedko v. Belarus, Communication No. 886/1999, (1999), CCPR/C/77/D/886/1999, para 10.2; Mariya Staselovich v. Belarus, Communication No. 887/1999, U.N. Doc. CCPR/C/77/D/887/1999 (2003), para 9.2.

17 Commission on Human Rights Resolution 2005/59 20 April 2005.

18 Concluding observations of the Human Rights Committee: Nigeria (CCPR/C/79/Add.65).

19 A. Attari, S. Dashty and M. Mahmoodi (2006) ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’ in *La Revue de Santé de la Méditerranée orientale* Vol. 12, No 1/2, pp72-80.

20 General Assembly, 67th Session, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 9 August 2012, A/67/279, para. 53-64; Human Rights Council Joint Statement, Namibia (on behalf of a group of countries), HRC33, General debate item 3, 16 September 2016.

21 Inter-American Court of Human Rights, *Maritza Urrutia v. Guatemala*. 27 November, 2003. Series C No. 103; Special Court for Sierra Leone, *Prosecutor vs. Moinina Fofana and Allieu Kondewa*, 2 August 2007, para. 153.

22 *Prosecutor vs. Moinina Fofana and Allieu Kondewa*, para. 153.

Recommendations for States

The requirement to take the best interests of the child into account as a primary consideration in all decisions affecting them is a central principle of the Convention on the Rights of the Child. If the impact of the death penalty constitutes torture or CIDT per se for the child, executing a parent can never be considered as being in that child's best interests.

Pending abolition, best interest assessments should be central to any decision related to a death penalty case where a child is concerned, including sentencing. This has been recognised by the Special Rapporteur on the Independence of judges and lawyers, who stated that in death penalty cases, judges should 'consider the effect of their sentences on the well-being of the child and the child's best interests.'²³ This situation is exacerbated in States with mandatory use of the death penalty. In addition to being a violation of international law in and of itself, the mandatory death penalty is incompatible with the rights of the child, as recognised by the *African Committee of Experts on the Rights and Welfare of the Child*: 'in State Parties that still retain the death penalty, it is of the utmost importance that it is not mandatory for any crime as this prevents, inter alia, consideration of the child's best interests when sentencing a parent or caregiver.'²⁴

²³ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc A/HRC/29/26, para. 109.

²⁴ African Committee of Experts on the Rights and Welfare of the Child, General Comment N.1, 'Children of incarcerated parents and primary caregivers' (2013).

Recommendations for the UN

In line with the recommendations contained in the summary report of the Panel on children of parents sentenced to death or executed, we call for an expert workshop on children of parents sentenced to death or executed, to include this issue.

Relevant QUNO publications

Forgotten victims: Children of parents sentenced to death or executed, QUNO (June 2016)

Children of parents sentenced to death or executed: Developments, good practices and next steps, QUNO (August 2014)

Lightening the load of the parental death penalty on children, Oliver Robertson and Rachel Brett (June 2013) Also available in: French, Spanish, Arabic, Farsi and Japanese.

Children of parents sentenced to death or executed: How are they affected? How can they be supported?, Child Rights Connect (August 2013) Also available in: French, Spanish, Russian, Arabic and Chinese.

Children of parents sentenced to death, Helen Kearney (February 2012) Also available in: French, Spanish and Arabic.

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