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Quaker United Nations Office

Executive summary

Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis

February 2019

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 migrants, refugees, children of prisoners, children of parents sentenced to death or executed, conscientious objectors to military service, and Indigenous peoples.

In the absence of the expert seminar to investigate the applicable human rights framework as recommended at the Human Rights Council panel discussion on the human rights of children of parents sentenced to the death penalty or executed in 2013, QUNO has commissioned *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*.¹ Researched and written by Professor Stephanie Farrior, this expert legal analysis of existing international human rights law offers an authoritative testament to the violations of human rights of the children of parents sentenced to death or executed that frequently result from States' judicial action toward their parents.

What follows here is an executive summary of that publication, which we hope can guide the necessary changes to end this particular harm endured by children.

A legal analysis: The best interests of the child principle

The best interests of the child principle is central to the protection of the right of children in international law. It is solidly established that it must be a *primary* consideration in all State decisions that impact children, including the sentencing to death or execution of a parent.²

Though the wording stands as 'a' rather than 'the' primary consideration, the Committee on the Rights of the Child have clarified that the expression 'means the child's best interests may not be considered on the same level as all other considerations', but above them; the paramount consideration.³

¹ UN Human Rights Council, Panel for the human rights of children of parents sentenced to the death penalty or executed, UN Doc. A/HRC/RES/22/11 (15 March 2013)

² The Convention of the Rights of the Child, article 3 (1990)

³ 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) (2013)

To uphold the best interests of the child principle, States are required to make a best interests assessment for each child implicated in a decision made by the State.⁴ The mandatory death penalty is therefore fundamentally incompatible with respect for the best interests principle, as it allows no space for this assessment. These assessments require ‘an evaluation of the possible impact (positive or negative) of the decision on the child’, and a justification of a decision that shows ‘that the right has been explicitly taken into account.’⁵ Farrior concludes that this makes it highly unlikely that such a process would ever result in a determination that the sentencing to death or execution of a parent is in that child’s best interests.

A legal analysis: Human rights of the child

A child whose parent is sentenced to death or executed is at risk of violation of many of their human rights. In their General Comment on the right to life, the UN Human Rights Committee has highlighted that imposing the death penalty on a parent of ‘very young or dependent children’ should be refrained from given the ‘exceptionally harsh results’ for that child.⁶

The prohibition of torture and other cruel, inhuman or degrading treatment is a peremptory norm of international law. As is sadly evident from the research, the severity of the experience of children of parents sentenced to death or executed can constitute torture or ill-treatment.⁷ The Inter-American Court of Human Rights has called for the application of the highest standard in the consideration of mistreatment of minors.⁸ As Farrior articulates, this ‘application of [the] ‘highest standard’ make[s] it difficult to conclude that a child does not experience the severity of mental suffering and anguish constituting ill-treatment when a parent is killed by the State’.

Similarly, the impact of a parent being sentenced to death or executed can be a prohibition of a child’s right to adequate standard of living, their right to health, their

right to education, their right to information, and their right to protection from mental violence, the prohibition of discrimination, and the principle of non-separation of a child from their parents, amongst others. Examples of these violations are rife in the research, given the extreme stress and anguish, emotional, physical and often financial, that children may face, as well as the stigma they may experience being associated with someone who has been sentenced or executed by the State. Once again, infringement of these international legal standards makes it highly unlikely that the due diligence of a best interests assessment for a child in this situation would ever conclude with the lawful sentencing or execution of their parents.

Conclusion

This brief summary of the findings in *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis* demonstrates both the legal prohibitions of the mandatory death penalty, and the near-impossibility that a best interests of the child assessment of a parent being sentenced to death would ever lawfully result in the execution of that parent.

A digital PDF of *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis* is available at quno.org/resource/2019/2/protection-rights-children-parents-sentenced-death-or-executed-expert-legal-analysis.

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)

5 Ibid

6 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)

7 Oliver Robertson and Rachel Brett, *Lightening the Load of the Parental Death Penalty on Children* (2003)

8 Inter-American Court of Human Rights Case of the Gomez Paquiyauri Brothers. Judgement of July 8, 2004. Series C No.110

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