



# 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.<sup>1</sup> 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 death row guards and prison staff, you can use this knowledge to uphold the State's obligation to respect the rights of children of those sentenced to death to continue to have a relationship with their children, including through regular communication and visitation, and by implementing child-friendly policies and training to mitigate the traumatising experience for a child of seeing a parent on death row.

## 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.'<sup>2</sup> This creates a presumption against the execution of those with dependent children.

The death penalty is a punishment that permanently separates a child from their parent. The Convention on the Rights of the Child commits all States who are party to it to 'ensure that a child shall not be separated from his or her parents against their will, except if it is determined that such separation is in the best interests of the child'.<sup>3</sup> This commitment must be respected within the prison right up until the parent's execution, through regular communication including via visits.

As prison staff, you should uphold the right to information of the family members of a person sentenced to death. This right is protected in Article 13 of the Convention on the Rights of the Child and numerous other human rights treaties.<sup>4</sup> The information the family is entitled to includes information regarding the date and time of an execution, and the place of burial of the body. Though the right to information may be legally restricted by States if the restriction is necessary to meet certain objectives, a failure to provide information to the families of those sentenced to death or executed does not meet the requirements for restricting this right, as the secrecy will never be necessary to meet any of the permissible objectives.<sup>5</sup> There is consensus among human rights bodies that secrecy around such information for family members amounts to inhuman treatment, the prohibition of which is a human right that may not be suspended under any circumstances.

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.<sup>6</sup>

## As a death row guard or prison staff, what can you do?

- Facilitate regular communication between the parent and their child. Provide the parent with the means to send and receive letters, and make and receive phone and video calls. Do not remove these privileges for disciplinary reasons, which punishes the child and is an infringement on their right to maintain direct contact with their parent.<sup>7</sup> Before execution, give the parent the opportunity and resources to create a goodbye message for their child, like a letter, or audio or video recording, which the child can be given after their parent's death.
- Encourage and support the implementation of sensitivity training and child-friendly policies in your prison. During visits, share information in a child-friendly manner, explaining to the child and supporting them through what may be a bewildering and upsetting process. Ensure the visiting area is child-friendly, clean and equipped with age appropriate toys and decoration. Remove any stigmatising markers that differentiate death row prisoners from others, such as different uniforms, or entering a communal visiting area at a different time, or identifying the family of death row prisoners with a badge or other signifier. These discriminating distinctions can deter families from visiting.
- Respect the right of the child to say a final goodbye to their parent. Do not cancel a final visit before execution for disciplinary reasons, or because the date or time of the execution has been brought forward. Enable a visit that allows for physical touch, to acknowledge the finality of the parting.
- Refuse to participate in an execution that is performed without notification of the family or which does not provide sufficient time for a final visitation, including when families may have to travel a long distance to do so.

## 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: [quno.org/resource/2013/6/lightening-load-parental-death-sentence-children](https://quno.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) (art.9). 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

4 Article 19 of the International Covenant on Civil and Political Rights; Article 13 of the American Convention Human Rights; Article 9 of the African Charter on Human and Peoples' Rights; and Article 10 of the European Convention on Human Rights

5 The restriction must also be provided by law, it must be done for one of the objectives set out in the treaty provision on the right to information – the respect of the rights or reputations of others, the protection of national security or of public order, and protection of public order - and it must be 'necessary' in order to meet that objective

6 Stephanie Farior (2019), Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis (Quaker United Nations Office, Geneva). Available at: [quno.org/resource/2019/2/protection-rights-children-parents-sentenced-death-or-executed-expert-legal-analysis](https://quno.org/resource/2019/2/protection-rights-children-parents-sentenced-death-or-executed-expert-legal-analysis)

7 The Convention on the Rights of the Child, article 3 (1990) (art.9)