



Human Rights Law Clinic Papers 2017

THE IMPACT OF THE DEATH PENALTY ON CHILDREN OF PARENTS SENTENCED TO DEATH

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Introduction

The death penalty impacts not only on accused and convicted persons, but also on the children of such persons. Children are in this way 'secondary victims' who tend to face significant negative impacts of a parent's death sentence or execution. This has been emphasized by the Quaker United Nations Office, which has pointed to issues affecting such children, both as ones similar to those experienced by other children of prisoners as well as issues unique to children of parents sentenced to death.¹ That said, children of death row prisoners have unique issues that they alone experience. Most obviously, the execution and the time before and after may be among the most traumatic that these children can experience.² The United Nations Human Rights Council acknowledged the negative impact of a parent's death sentence and urged States to provide these children with necessary protection and assistance.³ This memorandum highlights how their vulnerabilities and fears are exposed when guardians and parents responsible for their well-being, protection and development⁴ are sentenced or executed. Responding to a request for research on this matter by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the aim of this memorandum is two-fold. First, emphasis will be given to the affected rights of these children; second consideration will be had to the legal interpretation of the prohibition of torture and ill-treatment as related to children of parents sentenced to death.

This memorandum first sets out the applicable law and standards relevant to assess the impact of the death penalty on children of death row convicts and then a background on the affected rights of these children as well as the torture and ill-treatment that may be caused by certain elements such as the criminal justice system and society. The memorandum concludes with possible recommendations for the OSCE's Office for Democratic Institutions and Human Rights.

Applicable laws and standards

Before an analysis of the impact of the death penalty on children of accused or convicted parents, the following section will provide an overview of the applicable law and standards.

Convention against Torture

Article 1 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as the "infliction of such pain or suffering for certain purposes" and cruel and inhuman or degrading treatment as an act that can pose "harsh or severe suffering on the physical, emotional and psychological well-being of an individual, severe pain or suffering whether physical or mental, inflicted on a person". In the case of the child, particular emphasis is to be had on the severe mental and psychological suffering inflicted as result of the imposition of the death penalty on a parent.

Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is used throughout the memorandum as it is an international legal document that spells out the inherent rights of children. The Convention recognizes four key guiding principles which permeate the understanding and

¹ Olivier Robertson and Rachel Brett, *Lightening the Load of the Parental Death Penalty on Children* (Quakers United Nations Office, 2013).

² *Ibid*, p.46.

³ Human Rights Council resolution 22/11 (2013).

⁴ Ilias Bantekas and Lutz Oette, *International Human Rights law and Practice* (Cambridge University Press, 2nd ed, 2016), p.526.

construction of all pertinent rights.⁵ These principles include: the best interest of the child, a foundational principle underlying all decisions, judgments or actions concerning the child; the right to life, survival and development (Article 6); and the right to non-discrimination (Article 2).⁶ These principles together with others are used as yardsticks to evaluate the impact of the death penalty on children of persons sentenced to the death penalty.

International Covenant on Civil and Political Rights

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment”. Article 7 is relevant to this memorandum as it helps to arrive at the legal interpretation of the prohibition on torture and ill-treatment as related to children of parents sentenced to death.

Vienna Convention on Consular Relations

Article 36 of the Vienna Convention on Consular Relations stipulates that “if a national of a foreign country is arrested or detained on criminal charges, the detainee has a right to regular consular access during detention and any trial”. Access to consular officials by death row inmates is essential to give effect to the best interest of the child as it helps to relay information between the child and the accused persons facing the death penalty or persons sentenced to the death penalty. The state of nationality must therefore provide consular assistance to nationals facing the death penalty charges overseas to ensure aid in legal proceedings through the provision of competent defence counsels that will defend convicted parents based on the need for the court to take into account the best interest of the child.

Background

Children experience diverse and multi-faceted impacts of the death sentence even though they are the forgotten victims in most cases. A parent’s death sentence or execution is connected with major psychological and behavioural implications on children.⁷ There is a growing body of evidence that documents the specific and serious mental health implications of capital punishment for children of parents sentenced to death.⁸ Children may exhibit psychological problems including bedwetting, low self-esteem and psychosomatic pains.⁹ In some cases, there can be serious mental health problems including delusional beliefs and post-traumatic stress disorder symptoms.¹⁰ Other behavioural changes that usually occur in children include the use of violence, misbehaviour, vandalism and self-isolation.¹¹ Others are often aggressive as they harbour a great deal of anger.¹² Some of these behaviours may be symptoms of trauma that may or may not be recognized.¹³

Children also have rights that need to be protected and fulfilled. The rights of these children are violated as a result of the imposition of the death penalty on a convicted parent. These rights include the right to life, survival and development, non-discrimination, education and the right to alternative care, as stipulated in Articles 6,2,28 and 20 respectively of the Convention on the Rights of the Child.

In addition to this, children have different ways of experiencing pain and suffering associated with the death penalty. This depends on the personality and circumstance of the child,

⁵ Ibid, p.531.

⁶ G. Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff,1995), p.15.

⁷ Rachel King, ‘The Impact of Capital Punishment on Families of Defendants and Murder Victims’ Family Members’, (2006) 89(5) *Judicature*, pp.292-296.

⁸ Report of the Secretary-General, ‘Question of the death penalty’, UN Doc A/HRC/24/18(2013), para.77.

⁹ Robertson and Brett, op cit, p.4.

¹⁰ Ibid.

¹¹ Ibid.

¹² Human Rights Council, ‘Summary of the panel discussion on the human rights of children sentenced to death’, UN Doc A/HRC/25/33 (2013), p.6.

¹³ Ibid.

reactions of people around them, the criminal justice system and even public/media responses.¹⁴ The negative actions of these elements might contribute to the torture, inhuman and degrading treatment of the child. These actions occur at various stages of the judicial process. The media for example, plays an important role in the process of the death penalty.¹⁵ This is because the death penalty is most at times of high public and media interest. In some jurisdictions, journalists may accompany the police to make arrests.¹⁶ The media can demonize suspects describing them as 'monsters' and implying they are guilty for the crime¹⁷. This labelling can cause society to stigmatize against these children. The stigmatization can lead to trauma and children may isolate themselves from peers and even the rest of the family. Children may also experience disenfranchised grief where society does not socially validate their pain.¹⁸

In addition to this, children may experience trauma from the day of arrest to the day of execution. For many children, the arrest of a parent will be the first time they have had contact with the criminal justice system.¹⁹ The fear and uncertainty about what will happen to the parent may not be resolved until the judicial process is complete.²⁰

Affected rights of children of parents sentenced to death

One of the cardinal principles of human rights is that they apply to all persons irrespective of age, gender, religion or any other particular status. Hence they equally apply to children.²¹ The Convention on the Rights of the Child and its subsequent protocols has somewhat changed the state of affairs by introducing several principles which transform children from objects to real subjects of the law. Under this position, reflected in the CRC, children possess an independent legal personality which encompasses specialized and general human rights entitlements.²² However, sentencing a parent to the death penalty compromises the enjoyment of a wide spectrum of children's rights.

Children are directly and powerfully impacted by their parent's involvement with the criminal justice system. Interestingly, the number of children whose parents are sentenced to death is unknown because they are normally regarded as the 'forgotten victims' in these cases.²³ However, children have their own rights and needs which should be recognized and fulfilled. Children have a right to life, survival and development as stipulated in the CRC.²⁴ The vulnerability of children is rather different from that of other vulnerable groups such as women, disabled persons, LGBTI persons and indigenous people. This is because, at different stages of their development, they are mostly dependent on others for their survival and development. Sentencing a parent to death can be very problematic for children because they do not typically possess the means for their own well-being and as such are dependent on their parents or guardians. Parents contribute to defining and shaping of several of the characteristics of the child.²⁵ Unlike adulthood, childhood is a period of continuous growth from birth to infancy, through the preschool age to adolescence. The Committee on the Rights of the Child has emphasized that each phase is significant as important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. The stages of the child's development are

¹⁴ Robertson and Brett, op cit,p.4.

¹⁵ Ibid,p.11

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Sandra Jones and Elizabeth Beck, 'Disenfranchised grief and non-finite loss as experienced by families of death row inmates', (2006-2007)Vol 54(4) *Omega*, pp.289-99

¹⁹ Robertson and Brett, op cit,p.10

²⁰ Ibid,p.7

²¹ Bantekas and Oette, op cit, p.528.

²² Ibid, p.529

²³ Robertson and Brett, op cit, p.3.

²⁴ CRC, Article 6.

²⁵ Bantekas and Oette, op cit, p.533

cumulative and each stage has an impact on subsequent phases, influencing the child's health, potential risks and opportunities.²⁶ Therefore, the absence of a parent figure as a result of the death penalty can be a hindrance to the developmental process of a child.

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.²⁷ The impact of the death penalty can cause post-traumatic stress disorder²⁸ which can undermine the child's physical and psychological well-being as well as compromise cognitive development. The impact on their cognitive development can in turn compromise their enjoyment of the right to education.²⁹

According to the CRC, children also have the right to be free from discrimination based on the status of their parents.³⁰ Given the strong stigma attached to capital punishment, this right may be violated when a parent is sentenced to the death penalty or executed on death row. Stigma is the ultimate punishment that a society can inflict on the family of a condemned person. Sometimes discrimination and hostilities from the community may be so great that the family may move to a different area, where they are unknown. Potential alternative carers including family members may not take in the children. It may be that they are unwilling due to the stigma and discrimination they face and worries that the children will 'infect' other children.³¹ In certain societies, they are said to bring bad luck.³² According to a caseworker within the organization 'Morning Tears' (which works in a number of countries where children have been sentenced to death or to long prison terms), "nobody really wants them".³³ The end result of such discrimination is that many of these children end up on the streets since many of them come from poor homes.³⁴ Children and children's carers are frequently stigmatized by association, and this may continue even after the execution as children are mostly identified with their dead parent.³⁵ However, children are not supposed to pay for the acts of a parent.

Children permanently or temporarily deprived of their family environment due to the imposition of the death penalty by the State are entitled to special protection by the State.³⁶ The family unit is very important, since the family is entrusted under law with the function of acting as the primary carer of the child.³⁷ According to the European Court of Human Rights, the best interest of the child comprises two limbs: maintaining family ties as well as ensuring the child's development within a sound environment such as would not harm its health and development.³⁸ When the child is deprived of the family setting, the State should provide alternative care and support. Most times, however, children may reject the State's authority, lose a sense of personal allegiance to the State and become unwilling to seek or accept assistance. This is especially so in the current context because they associate the State as the entity that executed their parent.³⁹ States often fail to make available support needed for medical expenses, counselling or funeral expenses to children and family of an executed

²⁶ Committee on the Rights of the Child, General Comment 15 On the rights of the child to the enjoyment of the highest attainable standard of health, UN Doc CRC/C/GC/15 (2013), para. 20.

²⁷ Report of the Special Rapporteur on torture and other cruel and inhuman treatment, UN Doc A/HRC/28/68 (2015), para. 33.

²⁸ Ibid.

²⁹ CRC, Article 28.

³⁰ CRC, Article 2.

³¹ Robertson and Brett, op cit, p.29.

³² Morning Tears, The People's Republic of China (Documentary, 2011).

³³ Office of the High Commissioner for Human Rights, "Hidden" victims: the children of parents on death row', Press Release, 10 October 2013, available at URL: <http://www.ohchr.org/EN/NewsEvents/Pages/HiddenVictims.aspx> (accessed 7 March 2017)

³⁴ Ibid.

³⁵ Expert workshop participant from Africa, March 2013.

³⁶ CRC, Article 20.

³⁷ CRC, Article 5.

³⁸ *Neulinger and Shuruk v Switzerland* (2010) ECHR 1053, para.136. See generally, Michael Freeman, Commentary on the UN Convention on the Rights of the Child: Art 3 (Brill, 2007).

³⁹ Expert Workshop participants from North America, February 2013.

person.⁴⁰ Most times, support does not extend to the offender's children even though they are also victims, within the meaning of the United Nations Declaration of Universal Principles of Justice for Victims of Crime and Abuse of State Power.⁴¹

In countries where a parent's death sentence often means homelessness for the child, governments have been blind to their needs and failed to provide alternative care.⁴² The Human Rights Council, in a resolution adopted in March 2013, urged states to provide where appropriate in the best interest of the child, another member of the family, with access to the parent and all relevant information about the parent.⁴³

In the OSCE region, in relation to safeguards provided for children whose parents have been sentenced to death, a large number of States do not have in place specific legislation for these situations. They have stated that protection is given to those in such situations through general rules and legislation governing the protection of children's rights. Malta, for example made mention of the 2013 United Nations Human Rights Council's panel discussion, conclusion and recommendations on the human rights of children of parents sentenced to death or executed. Malta stated that protection will be offered in line with these recommendations should such cases occur.⁴⁴ Interestingly, the Belarus Government has, however, put in place a measure to provide assistance to children whose parents have been sentenced to death. Women are exempted from the death penalty but in cases when a father with dependents is sentenced to death, the court has to notify the Education Department of the city of residence in order to insure State protection for the child.⁴⁵

States must also offer support for children of parents sentenced abroad. These children also experience the impact of the death penalty in a peculiar way. At times, affected children may be found in the same country with the convicted parent or may be in the country of origin and even sometimes in a third country.⁴⁶ However, whatever the location, the state of nationality has a role to play in supporting these children. Children in the same country as convicted parent need to be returned home to other family members or another carer who is competent enough to take care of the child⁴⁷. As such, the state has to make sure that children are able to participate and be heard in decisions about alternative carers⁴⁸. In other words, states should make sure that alternative care is 'necessary' and must guarantee that the alternative care option provided is deemed 'appropriate'.⁴⁹ On the other hand, children in the country of origin must be given assistance financially or provided with means to communicate or even visit convicted parents abroad⁵⁰. In addition to this, sometimes children may seek answers to certain questions regarding the parent's death sentence or may even need re-assurances of state commitment to assist in their predicament.⁵¹ As such, the state has to make available well-equipped institutions that operate over a wide area and are well-placed to provide adequate information on services available to these children⁵². These supports may include Non-Governmental Organisation support, telephone help lines,

⁴⁰ Rachel King, *Capital Consequences: Family of the Condemned Tell Their Stories* (Rutgers, 2005), p.10.

⁴¹ Murder Victims' Families for Human Rights, "Creating More Victims: How Executions Hurt the Families Left Behind" (Cambridge, MA, 2006), p.1

⁴² Morning Tears, Newsletter (2011) 6(3), p.1.

⁴³ Human Rights Council resolution 22/11 (2013).

⁴⁴ OSCE ODIHR, 'The Death Penalty in the OSCE Area: Background Paper 2016', September 2016, p.36.

⁴⁵ Ibid, p.40.

⁴⁶ Robertson and Brett, op cit, p.41

⁴⁷ Ibid, p.42

⁴⁸ Quaker United Nations Office, 'Children of parents sentenced to death or executed: Development, good practices and next steps'(QUNO, 2014), p.10

⁴⁹ Ibid, p.41

⁵⁰ Robertson and Brett, op cit, p.42

⁵¹ Quaker United Nations Office, op cit, p.11

⁵² Ibid.

websites and internet-based therapeutic support⁵³. These support systems can help reduce the severity of post traumatic stress disorder in children and also serve the particular therapeutic needs of children of death row inmates⁵⁴. State should also provide support through social aid schemes that will cover the living expenses, school fees and medical expenses of such children.⁵⁵ In all this, it is imperative that the state informs children of available support as sometimes many of these children are unaware of certain state support.⁵⁶ The criminal justice system and other state authorities must provide this information orally or in documented forms especially in languages children of different ages and stages of development can comprehend.⁵⁷

To sum up, children have a wide spectrum of rights under the law. However, the diverse and multifaceted impact of the death penalty on children can violate these rights. The impact of the death penalty makes it difficult for a child to survive physically,⁵⁸ enjoy physical and mental well-being⁵⁹ and have adequate means.⁶⁰ They are also deprived of a family environment and therefore they fail to grow up in a nurturing environment in which they can develop their personality.⁶¹ Most of them are not able to acquire knowledge and skills (education)⁶² and achieve their full potential or participate as full and equal members of society due to stigma.⁶³ A child's well-being is entrusted to their parents and guardians who bear several obligations for their protection and development. Children have rights and needs and must be protected and fulfilled in all cases.

The death penalty as torture and/or ill-treatment of children of parents sentenced to death

It is the position of the author of this memorandum that the death penalty may constitute torture, and inhuman and degrading treatment of children of parents sentenced to death. Children experience grief, emotional and psychological trauma differently to adults owing to their physical and emotional development and specific needs.⁶⁴ In children, ill-treatment may cause even greater or irreversible damage than for adults. While the death penalty of a parent is often a painful loss, the knowledge that the death penalty was caused by the deliberate actions of another (the State) is distinctly traumatic for children.⁶⁵ In children, the restriction of information of executions, witnessing of executions and sentencing of a parent abroad can constitute torture and ill-treatment.

The secrecy surrounding detention on death row and executions and the failure to return the bodies to the family are clear violations of both international standards on the use of the death penalty⁶⁶ and human rights of the children of the executed.⁶⁷ In some countries, neither the death row inmates nor their children are informed of their upcoming executions.⁶⁸ The UN Special Rapporteur on extrajudicial, summary and arbitrary executions has

⁵³ Robertson and Brett, op cit, p.9

⁵⁴ Ibid

⁵⁵ Ibid., p.8

⁵⁶ Ibid.

⁵⁷ Quaker United Nations Office, op cit, p.11

⁵⁸ CRC, Article 6.

⁵⁹ CRC, Article 24.

⁶⁰ CRC, Article 27.

⁶¹ Preamble to the Convention on the Rights of the Child.

⁶² CRC, Articles 28 and 29.

⁶³ UNICEF, *The State of the World's Children: Childhood under Threat* (2005), p.18.

⁶⁴ Atle Dyregrov, *Grief in Children: A Handbook for Adults* (Jessica Kingsley Publishers, 1991), p.22.

⁶⁵ Helen F. Kearney, *Children of parents sentenced to death* (QUNO, 2012), p.14.

⁶⁶ Economic and Social Council resolution 1984/50.

⁶⁷ Amnesty International submission to the UNCRC day of General Discussion 2011, available at URL <<http://www2.ohchr.org/English/bodies/CRC/discussion2011/submissions.htm>> (accessed 4 March 2016).

⁶⁸ Amnesty International, 'Ending Executions in Europe: Towards abolition of the death penalty in Belarus' (March 2009), p.9.

observed that in a “considerable number of countries information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions or as to the numbers or identities of those detained and little if any information is provided to their children”.⁶⁹ There are many instances where children have been informed only later, sometimes by coincidence rather than design.⁷⁰ The Human Rights Committee has also stated that, with regard to the ICCPR, the failure to notify the children of the prisoners on death row of their execution is incompatible with the Covenant.⁷¹ The Committee views these practices as having the effect of “intimidating or punishing the children by leaving them in a state of uncertainty and distress amounting to a violation of article 7 of the International Covenant on Civil and Political Rights”.⁷² The UN Special Rapporteur on extrajudicial, summary and arbitrary executions has also stated that “refusing to provide convicted persons and children with advance notice of date and time of execution is a clear violation of human rights. These practices are inhuman and degrading and undermine procedural safeguards surrounding the right to life”.⁷³ Sometimes countries use the right to privacy as a rationale to justify secret executions. The rationale is to carry out secret executions in order to protect the privacy of the prisoner as well as that of the children.⁷⁴ However, children of death row inmates must be given reasonable advance notice of the scheduled date and time of executions with a view of reducing the psychological suffering caused by lack of opportunity to prepare themselves for the event.⁷⁵ Secrecy of executions violates the right of children to information regarding the sentence of their parents.⁷⁶ Executions without notification, bringing forward the time or date of execution so that final visits are unable to take place can be very distressing for children of death row inmates. Allowing final visits before executions allows final goodbyes to be said and also acknowledges the irreparable nature of the parting.⁷⁷ It has been suggested, for example, that parents yet to be executed may give their children recordings, videos and cards in the form of their last messages to their children.⁷⁸ This can be referred to later in the future by children.

Some States also do not return the bodies of executed prisoners to their families. Denying children and family a burial or cremation exacerbates their distress, complicates their trauma and the grieving process.⁷⁹ Secrecy and refusal to hand over remains to families are especially cruel features of capital punishment. There is the need for total transparency and avoidance of harm to innocents in the whole process.⁸⁰

The witnessing of executions is also a form of torture and ill-treatment of the child. In some jurisdictions, executions may take place in public.⁸¹ Witnessing the executions can cause distress aside from dealing with other surrounding circumstances. These circumstances may include a hostile crowd outside the prison, celebrations and possibly public statements or

⁶⁹ Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, UN Doc E/CN.4/2005/7 (2004), para.57.

⁷⁰ Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, UN Doc E/CN.4/2006/53/Add.3 (2006), para.32.

⁷¹ Concluding Observations of the Human Rights Committee: Japan, UN Doc CCPR/CO/79/Add.102 (1998), para.21.

⁷² Report of the Human Rights Committee, UN Doc E/2005/3, para.125.

⁷³ Special Rapporteur on extrajudicial, summary and arbitrary executions, UN Doc E/CN.4/2006/53/Add.3 (2006), para.32.

⁷⁴ *Ibid.*, para.39.

⁷⁵ Concluding Observations of the Human Rights Committee: Japan, UN Doc CCPR/C/JPN/CO/5 (2008), para.16.

⁷⁶ CRC, Article 9(4).

⁷⁷ Robertson and Brett, *op cit.*, p.32.

⁷⁸ *Ibid.*

⁷⁹ Helen F. Kearney, *op cit.*, p.28.

⁸⁰ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/67/279 (2012), p.14.

⁸¹ Special Rapporteur on extrajudicial, summary and arbitrary executions, UN Doc E/CN.4/2006/53/Add.3 (2006), para.42.

conferences by the victims of the offence.⁸² The Human Rights Committee has observed that carrying out executions before the public is a practice that is “incompatible with human dignity”.⁸³ According to Michelle Lyons, a reporter and spokeswoman for the Texas Department of Criminal Justice, relatives of inmates including children who witness executions exhibit certain emotional reactions.⁸⁴ These reactions include uncontrollable and excessive grief, confusion, disorientation and hysteria.⁸⁵ Studies have also shown that children who witness the death penalty exhibit symptoms of post-traumatic stress disorder,⁸⁶ such as insomnia, low-self esteem and depression.⁸⁷ Most often, the stress ranges from moderate to severe stress in children. The idea of shame is often linked to physical vulnerability.⁸⁸ Witnessing or imagining a parent’s execution demonstrates his or her vulnerability in the most vivid way imaginable. For the child, seeing their parent so belittled and powerless may cause confusion, anger and guilt.⁸⁹

Sentencing or execution of a parent abroad can also constitute torture and ill-treatment for children. Sentencing a parent abroad can be very problematic for a child as the parent-child relationship eventually comes to a halt. It becomes extremely difficult for children to communicate with their parents abroad due to issues of distance from and difficulties in accessing the parent.⁹⁰ For some children, telephone contact is more important and effective even than visiting the parent abroad⁹¹. However, in some countries phone calls are not allowed and even when they are allowed, some children find it difficult to make international calls.⁹² Aside this, the telephone means of communication can be more devastating for children in different time zones and for convicted parents since there is little privacy for prisoners to talk to their children or the carers on the outside.⁹³ In addition to this, in most prisons where letters are mostly the mode of communication, letters are clearly marked and as such children may find it difficult to receive such letters. Some children may also be too young or even uneducated to read or write letters.⁹⁴ This may be a hindrance to communication between both parties and can cause trauma and anxiety in children. Another option, which is visiting the parent abroad, can be very expensive, a long and tedious process and may even heighten painful emotions⁹⁵. Aside this, some prisons are located in isolated places making it difficult for children to access them.⁹⁶ Even when children can access these prisons, the conditions and procedures makes it extremely difficult for children to have physical contact with the parent as such the normal family atmosphere cannot be created for effective communication⁹⁷. Some children have also complained of the harsh and hostile attitudes of some prison staffs, asserting that they make them feel like ‘criminals’

⁸² Robertson and Brett, op cit, p.34.

⁸³ Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, UN Doc E/CN.4/2006/53/Add.3 (2006), para.40.

⁸⁴ Michelle Lyons Describes What It’s Like Witnessing An Execution - Business Insider’, available at URL: <<http://www.businessinsider.com/michelle-lyons-describes-what-its-like-witnessing-an-execution-2014-8?IR=T>> (accessed 16 March 2017).

⁸⁵ Ibid.

⁸⁶ A. Attari, S. Dashty and M.Mahmoodi, ‘Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran’, (2006) 12(1-2) *East Mediterranean Health Journal*, pp.72-80.

⁸⁷ Human Rights Council, ‘Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty’, UN Doc A/HRC/25/33(2013), p.6.

⁸⁸ Helen F. Kearney, op cit, p.23.

⁸⁹ Ibid, p.23.

⁹⁰ Robertson and Brett, op cit, p.41.

⁹¹ Quaker United Nations Office, op cit,p.32

⁹² Robertson and Brett,op cit,p.42

⁹³ Quaker United Nations Office, op cit,p.32

⁹⁴ Ibid,p.31

⁹⁵ Ibid,p.33

⁹⁶ Ibid

⁹⁷ Ibid

themselves for visiting⁹⁸. However, ‘when children lack frequent and continuous contact with a parent their attachment to the parent can be affected’⁹⁹. Children of parents sentenced abroad need to have contact with parents to reduce trauma and anxiety and is also beneficial to their development and to help maintain positive relationship with convicted parents. Children who find themselves in the country of origin may also need practical, emotional and financial assistance to communicate with and visit their imprisoned parents.¹⁰⁰ Other difficulties the children at home may face are the language and cultural barriers which may affect their understanding of the whole legal process.¹⁰¹ This can cause trauma and torture in children as they are constantly in a state of despair and anxiety of what may be happening to the convicted parent.

To sum up, the imposition of the death penalty on a parent puts children in a state of anguish and mental stress amounting to inhuman treatment in violation of article 7 of the ICCPR and article 1 of the Convention against Torture. The parent-child relationship is also affected in a way that may cause “intense fear, helplessness or horror”¹⁰² in the child, potentially leading to post-traumatic stress disorder or other trauma symptoms in the child that persist into adulthood and throughout life.¹⁰³ The impact of the death penalty on children therefore falls within the meaning of Article 1 of the Convention against Torture since it has an effect of intimidating and punishing children by inflicting severe psychological pain and suffering.

Conclusion

In conclusion, the impact of the death penalty on children has a close relationship with the prohibition of torture and degrading treatment.¹⁰⁴ In children, failure to inform them of the execution and burial place has been found to violate the prohibition of ill-treatment and the human rights of children.¹⁰⁵ The witnessing of executions and sentencing of a parent abroad can also constitute inhuman treatment and torture in children. In addition to this, a wide spectrum of their rights may also be violated.

Recommendations

Against this background, this memorandum makes the following recommendations for consideration by the OSCE’S Office for Democratic Institutions for Human Rights:

1. States and the various criminal justice systems should consider the impact of death sentences on the child’s best interest when imposing sentences;¹⁰⁶
2. There should be the prohibition of secret executions and removal of barriers to adequate information on the part of children of persons accused of death penalty offences or persons sentenced to the death penalty;
3. States should consider the use of child friendly prisons to accommodate children when they visit death row parents;¹⁰⁷

⁹⁸ Ibid,p.35

⁹⁹ Ibid,p.31

¹⁰⁰ Robertson and Brett,op cit,p.42

¹⁰¹ Ibid,p.41

¹⁰² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Press Inc., 4th ed,1994), para.309. See also Elizabeth Beck, Sarah Britto and Arlene Andrews, *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP, 2007), p.125.

¹⁰³ Robertson and Brett, op cit, p.35.

¹⁰⁴ Bantekas and Oette, op cit, p.347.

¹⁰⁵ *Mariya Staselovich v Belarus*, Human Rights Committee Communication 887/1999,UN Doc CCPR/C/77/D/887/1999 (2003), para.9.2. See also *Schedko v Belarus*, Human Rights Committee Communication 886/1999, UN Doc A/58/40 (2003), para.10.2.

¹⁰⁶ Robertson and Brett, op cit, p.17.

¹⁰⁷ OHCHR, ‘Hidden victims: the children of parents on death row’, op cit.

4. Specialist support should be provided to children of parents sentenced to death or executed and also informed about the available support;¹⁰⁸
5. States should refrain from carrying out the death penalty in public or in any other degrading manner that will cause torture or ill-treatment of a child witnessing such execution;¹⁰⁹
6. States should prepare, publish and disseminate information to their law enforcement and criminal justice systems about their obligations regarding foreign national death row inmates;¹¹⁰
7. Consular representation should also help in commuting the death penalty of foreign nationals in the best interest of the child. This can be done by obtaining the review and consideration of the convicted nationals' legal proceedings through technical and legal assistance to defence counsels and consulates;¹¹¹
8. To give effect to children's the right to be heard,¹¹² criminal justice systems should consider the possibility of the child being able to make a submission to the court regarding the impact of a parent's death sentence.¹¹³

¹⁰⁸ Robertson and Brett, op cit, p.9.

¹⁰⁹ Interim Report of Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, UN Doc A/67/279 (2012), para 80(c).

¹¹⁰ Robertson and Brett, op cit, p.43.

¹¹¹ Quaker United Nations Office, op cit, p.6.

¹¹² CRC, Article 12.

¹¹³ Robertson and Brett, op cit, p.45.