

# **CHILDREN, YOUTH AND THE DEATH PENALTY**

**A REPORT BY THE INTERNATIONAL  
COMMISSION AGAINST THE DEATH PENALTY**











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# Introduction

The issue of how the death penalty affects children and youth is often ignored by policy makers. This report aims to change that by putting the protection of children's rights at the center of the debate on the death penalty.

The report builds on the panel discussion titled "Youth and the Death Penalty" which was organized by the International Commission against the Death Penalty (ICDP) and the Government of Australia. The discussion was held on 29 June 2022, at the sidelines of the 50th session of the UN Human Rights Council, in Geneva.<sup>1</sup>

The report uses the terms 'children' and 'youth' in line with international human rights standards and United Nations definitions. It provides an overview of the context of the death penalty and the current state of capital punishment, with a special focus on how the death penalty affects children.

While most states today do not execute children, there are some that detain them on charges that carry the death penalty and also sentence them to death. These children face cruel, inhuman treatment, including imprisonment during trial and during the appeals process.

Importantly, the report addresses the less-discussed issue of how the death penalty impacts children whose parents or other close family members are charged with death penalty-applicable offences, are sentenced to death, or have been executed. These children face social stigma, discrimination, and physical and psychological consequences, as the children of people who have committed serious crimes.

The report discusses international standards relating to children and the death penalty, in particular the provisions for the abolition of capital punishment for those below the age of 18. Crucially the report highlights the issue of determining the age of children, as this is central to abolishing the death penalty for children.

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<sup>1</sup> The side-event consisted of a panel discussion with presentations of the international human rights legal framework providing for the abolition of the death penalty for children (people below the age of 18), analysis of its widespread acceptance by a large majority of countries, its continued use despite this, and relevant data from countries that retain the death penalty for those children. The speakers in the panel included:

- Marta Santos Pais, ICDP Commissioner and former Special Representative of the United Nations Secretary-General on Violence against Children
- Simon Walker, Chief of Rule of Law and Democracy Section, UN Office of the High Commissioner for Human Rights (OHCHR)
- Kirsten di Martini, Senior Child Protection Adviser, UNICEF (online)
- Laurel Townhead, Representative (Human Rights and Refugees), Quaker United Nations Office (QUNO)
- Sabrina Butler-Smith · Survivor who was wrongfully sentenced to death as a juvenile offender (video testimony).

The panel was moderated by Ambassador Amanda Gorely, the Permanent Representative of Australia to the United Nations Office in Geneva.

The report examines the efforts of organizations such as UNICEF, the UN Office of the High Commissioner for Human Rights (OHCHR) and the Quakers United Nations Office (QUNO) and ICDP Commissioner Marta Santos Pais, the former UN Secretary General's Special Representative on Violence against Children, who presented at the 29 June 2022 event. These interventions drew much-needed attention to the death penalty and its impact on children and youth, and provided a way forward for future work to ensure that no child is sentenced to death and or executed.

At the end of the report the presentations of the speakers at the side event are included, which also features the testimony of Sabrina Butler Smith, a juvenile death penalty exoneree. She is now a powerful voice against capital punishment in the USA, having suffered grievous human rights violations through the process of being tried and sentenced to death as an adult when she was seventeen.

There are three main reasons why the death penalty on children should be addressed as a priority in the debate on abolition:

- The international community has for long pledged to ban capital punishment for people under the age of 18 years. The UN Convention on the Rights of the Child (CRC) which was adopted more than 30 years ago, and is in force in 196 countries, states that *"neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"* (Article 37.) However, some countries, including the People's Republic of China, the Democratic Republic of Congo, the Islamic Republic of Pakistan, the Kingdom of Saudi Arabia, the Republic of South Sudan, Republic of the Sudan, and the Republic of Yemen have continued to execute of children despite being party to the CRC.<sup>2</sup>
- There are positive developments and good practices around the world, which can provide both inspiration and information for the abolition of the death penalty on children and young people. It is important to document, share and disseminate these good practices to influence positive change.
- Despite progress, children are still at risk and urgently need protection. Some countries that retain the death penalty continue to impose it on children. In 2021, at least 87 children were under a sentence of death and at least four children were executed for crimes allegedly committed before they reached the age of 18.<sup>3</sup>
- A lack of transparency around the death penalty in general, especially with regards to children, makes it difficult to obtain reliable or accurate data. There is imprecise data on the exact number of children sentenced to death, on death row or executed. Additionally, it is difficult to confirm the age of the children at the time of the offence, the trial, and sentencing, and to ascertain if they enjoyed the legal safeguards they are entitled to, including the opportunity to seek pardon or the commutation of their sentences.<sup>4</sup>

<sup>2</sup> Amnesty International, "Executions of juveniles since 1990 as of November 2019", <https://www.amnesty.org/en/documents/act50/0233/2019/en/>

<sup>3</sup> Amnesty International, "Death Sentences and Executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>4</sup> Presentation by ICDP Commissioner Marta Santos Pais at the side event organized by Australia and ICDP in Geneva on 29 June 2022 titled "Youth and the Death Penalty," at the sidelines of the 50th UN Human Rights Council session.

It is essential to recognize that the death penalty does not affect only those children who are sentenced to death or executed. The rights and development of children whose parents or relatives face the death penalty or have been executed are often negatively affected. This is overlooked by the abolitionist debate and needs to be addressed.<sup>5</sup>

### **The difference between “children” and “youth”**

The CRC defines “children” as every human being below the age of 18 years.<sup>6</sup>

Preparing for the International Youth Year, in 1985, and endorsed by the General Assembly, the United Nations defined “youth” as people between the ages of 15 and 24. The United Nations while admitting that “(t)here is no universally agreed international definition of the youth age group...” decided to establish these categories because the sociological, psychological and health problems children and youth face may differ.<sup>7</sup> It must be noted that “(a)ll UN statistics on youth are based on this definition, as is reflected in the annual yearbooks of statistics published by the UN system on demography, education, employment and health.”<sup>8</sup>

For this report, we will follow the CRC’s definition of a child as anyone under the age 18 and the UN’s definitions of youth as those between the age of 15 and 24 years.

<sup>5</sup> Marta Santos Pais, “Children of parents sentenced to death or executed”, [https://quno.org/sites/default/files/resources/Children%20of%20Parents%20Sentenced%20to%20Death%20or%20Executed\\_DGPandNS.pdf](https://quno.org/sites/default/files/resources/Children%20of%20Parents%20Sentenced%20to%20Death%20or%20Executed_DGPandNS.pdf)

<sup>6</sup> United Nations Department of Economic and Social Affairs, “What does the UN mean by “youth” and how does this definition differ from that given to children”, <https://www.un.org/development/desa/youth/what-we-do/faq.html>

<sup>7</sup> Ibid.

<sup>8</sup> Both quotes from United Nations, “Peace, Dignity and Equality on a Healthy Planet: Who are the Youth?”, <https://www.un.org/en/global-issues/youth#:~:text=Who%20Are%20the%20Youth%3F,of%2015%20and%2024%20years>

### **The expansion of the child protection system to youth<sup>9</sup>**

The distinction between ‘children’ and ‘youth’ is recognized by the United Nations, but there is an ongoing debate on whether the child protection system should be extended to include young people.

In August 2022, the American Psychological Association (APA) published a resolution on whether the so-called ‘*late adolescents*’ (those between the ages of 18 and 20 years) should be eligible for the death penalty. It called on courts and state and federal legislative bodies in the United States to prohibit the application of death penalty to anyone under 21 years of age.

The APA cited the landmark US Supreme Court decision *Roper v. Simmons*, which ruled it unconstitutional to impose capital punishment for crimes committed while under the age of 18. The court held that juvenile offenders were considered to be “*categorically less culpable than the average criminal*”

The APA provided the following reasons for its conclusions:

- Based on the current state of science, brains of 18 to 20-year-olds cannot be said to be substantially different from those of 17-year-olds.
- The same characteristics of youth and immaturity that justify not imposing the death penalty on 16 and 17-year-olds are present in 18- to 20-year-olds.
- The 18 to 20-year-olds are still undergoing significant brain development, given that brain development does not end at the age of 17 years.
- Research on both the structure and function of brain development shows that brain maturation, especially in some key systems, is continuous until at least the age of 20 years.
- In the context of death penalty-applicable offences, 18 to 20-year-olds responses are similar to 17-year-olds rather than to adults.
- While young people tend to exhibit more extreme behaviors, such behavior decreases as they develop.
- Brains of 18 to 20-year-olds are still developing in key brain systems related to higher-order executive functions and self-control, such as “*planning ahead, weighing the consequences of behavior and emotional regulation*”

The APA resolution argued that if this criterion was to justify the non-application of the death penalty for those under 18 years, based on new scientific developments, this protection should be expanded to 18 to 20-year-olds.

<sup>9</sup> American Psychological Association, “APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known As the Late Adolescent Class”, <https://www.apa.org/about/policy/resolution-death-penalty.pdf>.

# The death penalty: overall context

The situation with the abolition of death penalty is both a case of the glass being half-full and of the glass being half-empty.

Looking at the half-full glass, we can see that there is visible progress towards the universal abolition of the death penalty.

- Over two thirds of the countries do not practice the death penalty in law and/or in practice. As of 30 December 2022, at least 113 countries are considered to be abolitionist for all crimes and eight countries are considered to be abolitionist for ordinary crimes. Twenty-four countries, including several that retain the death penalty, have not executed anyone for over a decade.<sup>10</sup>
- Over the recent past, a significant number of countries have abolished the death penalty – Chad (May 2020), Sierra Leone (July 2021), Kazakhstan (December 2021), Papua New Guinea (January 2022), the Central African Republic (May 2022), Equatorial Guinea (August 2022) and Zambia (December 2022).<sup>11</sup>
- States like Malawi have pledged to abolish the death penalty. In August 2022, Zambia adopted the Children's Code Act which explicitly prohibits applying the death penalty to children.<sup>12</sup> In December 2022 Zambia's President, Hakainde Hichilema, gave assent to the bill that abolished the death penalty, making it law.<sup>13</sup>
- There is also a rising number of countries ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty. Armenia and Kazakhstan became the 89<sup>th</sup> and 90<sup>th</sup> countries to do so.

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<sup>10</sup> ICDP research.

<sup>11</sup> Progress has been particularly important in Africa – Chad, CAR, Malawi, Sierra Leone and Zambia with Malawi are expected to abolish the death penalty in 2023. This builds upon the important General Comment 3 by the African Commission on Human Rights and People's Rights in 2015, which highlighted that "international law requires that those states that have not yet abolished the death penalty take steps towards its abolition to secure the rights to life and dignity, in addition to other rights e.g. to be free from torture and cruel and inhuman or degrading treatment".

<sup>12</sup> The Children's Code Bill, Act n. 12 of 2022, August 2022, article 79 (5), <https://www.parliament.gov.zm/sites/default/files/documents/bills/The%20Children%27s%20Code%20Bill%2C%202022%20Final.pdf>

<sup>13</sup> Zambia's Minister of Justice Mulambo Haimbe informed the ICDP delegation of this development in advance, during a meeting on the sidelines of the World Congress against the Death Penalty in Berlin, on 16 November 2022.



When we look at the half-empty glass, we see that there are still significant concerns :

- In 2021 there was an increase in the number of executions (20%) and in the number of death sentences (close to 40%) across the world.<sup>14</sup>
  - The majority of the world's population still lives in countries that retain the death penalty, and capital punishment is shrouded in secrecy and legal uncertainty.<sup>15</sup>
  - People with mental or intellectual disabilities continue to be sentenced to death.
  - The number of women under sentence of death remains an issue of grave concern. There is some information,<sup>16</sup> but in general, data by gender is hard to get. While it is believed that women make up nearly 5% of the world's total population of those under a sentence of death and nearly 5% of those executed there is a possibility that the numbers are higher.<sup>17</sup>
- Women are often sentenced to death for murder, often linked to gender-based violence. Most courts do not consider abuse, gender-based violence or trauma as mitigating circumstances. Women charged with such murders are also at risk of gender-based violence in prison.<sup>18</sup>
- Capital punishment continues to remain a serious risk and, in some cases, a tragic reality for children who are either sentenced to death or whose parents or caregivers face the death penalty or have been executed.

<sup>14</sup> Amnesty International, "Death sentences and executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>15</sup> Rajiv Narayan and Asunta Vivo Cavaller, "On Death Penalty: At a Tipping Point? Gradual Abolitionist Trend Worldwide, Reduced Executions but Facing Profound Challenges", *Journal for Human Rights Studies* 4(2): 1-53.

<sup>16</sup> For example, 8 in Egypt, 14 in Iran; in Tunisia, women constitute 6% of those sentenced to death.

<sup>17</sup> Amnesty International, "Death sentences and executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>18</sup> World Coalition against the Death Penalty, "Reflecting on the links between the death penalty and gender-based violence", <https://worldcoalition.org/2022/11/25/reflecting-on-the-links-between-the-death-penalty-and-gender-based-violence/>

# The situation of the death penalty and children

Most countries that retain the death penalty no longer execute children. However, there are still some countries where there are no legislative safeguards and children are at risk of being executed. There are also countries, albeit very few, where children continue to be executed.

Amnesty International recorded 157 executions of children between 1990 and 2021, in ten countries including the People's Republic of China, the Democratic Republic of Congo, the Islamic Republic of Iran, the Federal Republic of Nigeria, the Islamic Republic of Pakistan, the Kingdom of Saudi Arabia, the Republic of South Sudan, the Republic of the Sudan, the United States of America and the Republic of Yemen.

In 2021, four juvenile offenders were executed in Iran and Yemen<sup>19</sup> and there were reports that at least two children were executed in the Democratic People's Republic of Korea. In 2021 at least 87 children were under sentence of death,<sup>20</sup> 80 of them in Iran.

There are also countries where children are under sentence of death and/or sentencing children to death is a possibility, even though no executions have been carried out. For example, in Myanmar, four youth activists and at least seven university students were sentenced to death by a military court in November 2022.<sup>21</sup> Other reports suggested that at least two children were also under sentence of death.

In the Maldives, although the Child Rights Protection Act of November 2019 prohibits the death penalty for those below 18 years of age, five juvenile offenders remained under sentence of death, as of the end of 2021.<sup>22</sup> Puntland, Somalia reportedly sentenced six teenage boys to death in February 2022.<sup>23</sup>

Although Brunei has a moratorium on the death penalty and its last execution was in 1957, the implementation of a new penal code in 2019<sup>24</sup> puts children at risk of capital punishment. Under the new law, children over the age of 15, considered to be of sound mind, can be sentenced to death by stoning for adultery or rape.

<sup>19</sup> Amnesty International, "Death Sentences and Executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>20</sup> Amnesty International, "Death Sentences and Executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>21</sup> OHCHR, "Myanmar: UN Human Rights Chief alarmed at death sentences by secretive military courts", 2 December 2022, <https://www.ohchr.org/en/press-releases/2022/12/myanmar-un-human-rights-chief-alarmed-death-sentences-secretive-military>

<sup>22</sup> Amnesty International, "Death Sentences and Executions 2021", <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>23</sup> Save the Children, "Somalia: Calls for Justice as four children sentenced to death over involvement with armed groups", <https://www.savethechildren.net/news/somalia-calls-justice-four-children-sentenced-death-over-involvement-armed-groups>

<sup>24</sup> Human Rights Watch, "Brunei's Pernicious New Penal Code", 22 May 2019, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>

Tonga, which has not carried out executions since 1982, continues to allow sentencing juvenile offenders to death. Its Criminal Offences (Amendment) Act sets the minimum age for the death penalty at 15 years. In 2019, the UN Committee on the Rights of the Child recommended that Tonga amend its laws to explicitly prohibit capital punishment for children under 18 years of age.<sup>25</sup>

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<sup>25</sup> UN Committee on the Rights of the Child, “Concluding observations on the initial report of Tonga”, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsmTtQotXdvs%2FYu%2BE2mgGXAq2%2BXA5ZXyvTHdWMHHRys625mew05F-jpboghM9bdYDDHou9ZzB7VzQYUB6QH1e3p%2BaEaWfNybkeyuqDXjXXCF>

# International instruments relating to children and the death penalty

International human rights law entitles children to protection of their rights, and to certain guarantees and legal safeguards in the administration of justice. Furthermore, all children have the right to claim and obtain a remedy for violations of their rights, to enjoy legal safeguards and to a fair trial.

Respect for children's dignity and their best interests is central to their full enjoyment of rights. The use of capital punishment, whether applied directly to children or to their parents, goes against these principles.

International human rights law categorically prohibits the imposition of the death penalty for crimes committed by persons under the age of 18 at the time of the offence. This prohibition is affirmed by international treaties and customary international law.

## INTERNATIONAL TREATIES

### UNIVERSAL

Over the years, the international community, with few exceptions, has adopted several global treaties which explicitly exclude the use of the death penalty against children in any circumstances.

One such treaty is the **The International Covenant on Civil and Political Rights (ICCPR)**, adopted in 1966, which clearly states that “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age” (Article 6 (5).) Although 173 countries are party to the ICCPR, only the USA has entered a specific reservation to this provision.<sup>26</sup> **The Second Optional Protocol to the ICCPR**, in force in 90 States, which provides for the abolition of the capital punishment as a whole (and hence protection to juveniles) states: “No one within the jurisdiction of a State Party (...) shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction” (Article 1.)

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<sup>26</sup> Amnesty International, “The Exclusion of Child Offenders From the Death Penalty Under General International Law”, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500042003en.pdf>

**General Comment No. 36 of the UN Human Rights Committee**<sup>27</sup> provides a detailed interpretation of the ICCPR's provisions on the right to life in Article 6 and highlights the prohibition against the imposition of capital punishment on juveniles *"regardless of their age at the time of sentencing or at the time foreseen for carrying out the sentence"* (Article 6 (5)).<sup>28</sup> It affirms that if the offender's age at the time of the offence cannot be reliably proven they should be given the benefit of the doubt.<sup>29</sup>

**The Convention on the Rights of the Child (CRC)** is now a fundamental reference in the context of children and capital punishment. Adopted in 1989, it is in force in 116 States. Article 6 (1) of the CRC states that parties to the convention *"recognize that every child has the inherent right to life"* and that *"neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age..."* (Article 37(a).)

**General Comment No. 24 of the UN Committee on "the rights of the child in the child justice system,"**<sup>30</sup> adopted in 2019, reaffirmed the prohibition on imposing the death penalty on anyone below the age of 18 and clarified that this remains unchanged regardless of their age at the time of trial, sentencing or execution. The Committee also underlined that *"if there is no reliable and conclusive proof that the person was below the age of 18 at the time the crime was committed, he or she should have the benefit of the doubt and the death penalty cannot be imposed"*<sup>31</sup> and that *"(a)ny death penalty imposed on a person who was below the age of 18 at the time of the commission of the offence should be commuted to a sanction that is in full conformity with Convention."*<sup>32</sup>

It is important to note that General Comment No. 36, the UN Human Rights Committee (HRC), the UN Committee on the Rights of the Child (OHCHR) are all unequivocal, recognizing that states *"should refrain from executing persons... whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as persons of advanced age, parents of very young or dependent children."*<sup>33</sup>

These global treaties have significantly advanced the protection of children against capital punishment. They complement international humanitarian law treaties, which focused specifically on situations of conflict, and established that capital punishment could not be imposed on persons under the age of 18 in times of war or armed conflict.

<sup>27</sup> ICDP played a role in initiating the Human Rights Committee to draft this General Comment. In 2014, an ICDP delegation comprising of ICDP Commissioners Ruth Dreifuss and Hanne Sophie Greve and the ICDP Secretariat Staff met with members of the UN Human Rights Committee and called on them to draft an updated General Comment to reflect the current state of play and noting that the earlier General Comment 6 had been drafted before the Second Optional Protocol to ICCPR had been adopted. Shortly after the meeting, the Human Rights Committee announced that they would be drafting the General Comment. Moreover, ICDP was associated with the drafting process within the Human Rights Committee, including through Commissioner Marc Bossuyt who had led the drafting process of the Second Optional Protocol to the ICCPR.

<sup>28</sup> UN Human Rights Committee, General Comment 36 on Article 6: Right to Life, Paragraph 48, page 11, CCPR/C/GC/36.

<sup>29</sup> Ibid.

<sup>30</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/275/57/PDF/G1927557.pdf?OpenElement>

<sup>31</sup> Paragraph 79, UN Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, 18 September 2019 at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqI-kirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsfPdJXCiixfSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>

<sup>32</sup> Paragraph 80, ibid.

<sup>33</sup> Paragraph 49, ibid.

**Article 68 of the Geneva Convention, adopted on August 12, 1949, which concerns the Protection of Civilian Persons in Time of War** specifies that *“In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence”*. Similarly, **Article 77(5) of the Additional Protocol to the Geneva Conventions** which deals with the Protection of Victims of International Armed Conflicts states that *“The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed”*. Finally, **Article 6(4) of the Additional Protocol to the Geneva Conventions** on the Protection of Victims of Non-International Armed Conflicts affirms that *“The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence ...”*

## REGIONAL

The application of the death penalty is also prohibited by treaties adopted at the regional level. In Africa and the Americas, regional treaties explicitly prohibit using the death penalty against children, and acknowledge that the abolition of the death penalty is the ultimate safeguard for children. In Europe, the abolition of the death penalty, ensures children are not subject to capital punishment.

### Africa

The African Charter on the Rights and Welfare of the Child, ratified by 53 States, determines that “the death sentence shall not be pronounced for crimes committed by children” (Article 5(3).)

The African Commission on Human Rights and People’s Rights has, in its General Comment 3, reiterated that “international law requires that those states that have not yet abolished the death penalty take steps towards its abolition to secure the rights to life and dignity, in addition to other rights, e.g., to be free from torture and cruel and inhuman or degrading treatment”

### The Americas

Article 4(5) of the American Convention on Human Rights (ACHR) determines that *“capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age...”* The Convention has been ratified by 25 States. No State Party whose laws currently provide for the death penalty against children has entered a reservation to this provision.<sup>34</sup>

The **Inter American Commission Rapporteurship on Children** has devoted some of its reports to this important question. In its 2011 report *“Juvenile Justice and Human Rights in the Americas,”*<sup>35</sup> the Commission recognized that in some countries children can still be sentenced to death and specifically recommended that States *“abolish the death penalty and life imprisonment for children under the age of 18”*

<sup>34</sup> Amnesty International, “The Exclusion of Child Offenders From the Death Penalty Under General International Law”, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500042003en.pdf>

<sup>35</sup> Organization of American States, “Juvenile Justice and Human Rights in the Americas”, <https://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf>

## Europe

In the early 1980s the **Council of Europe** became a pioneer for the abolition of capital punishment, accepting that it was a grave violation of human rights.

Building upon the **European Convention on Human Rights (ECHR)**, which states that “Everyone’s right to life shall be protected by law” (Article 2), the Council of Europe expanded the protections under the Convention.

**Protocol No. 6**, adopted in 1982, was the first legally binding instrument to unconditionally abolish the death penalty in peacetime. All 46 member states of the Council of Europe ratified this text, guaranteeing the protection of juvenile offenders from capital punishment.

**Protocol No. 13**, adopted in 2002, requires the complete abolition of capital punishment, even for acts committed in time of war. The Protocol came into effect on 1 July 2003. As of now, all but two member states of the Council of Europe have signed and ratified this Protocol.

**The European Court of Human Rights** ruled in 2010 that the death penalty amounted to inhuman or degrading treatment irrespective of the circumstances in which it was applied and thus fell within the prohibition set out in Article 3 of the European Convention on Human Rights against torture and other cruel, inhuman or degrading treatment or punishment.<sup>36</sup>

In 2021, the **Committee of Ministers of the Council of Europe** adopted Recommendation CM/Rec(2021)2 to member states on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment. The Recommendation includes a strong commitment to provide advice and assistance to non-member states on the reinforcement of their regulatory framework and to prevent support for the use of the death penalty by third countries.<sup>37</sup>

In 1989, abolition of the death penalty was made a condition of accession to the **Council of Europe**.

The complete prohibition of the death penalty is included in the **Charter of Fundamental Rights of the European Union**, which was made legally binding when the Treaty of Lisbon came into effect in 2009. Article 2 of the Charter, on the right to life, establishes that, “No one shall be condemned to the death penalty, or executed”.

With the adoption of **EU Guidelines on the Death Penalty**, EU Member States reaffirmed their commitment to the EU Charter of Fundamental Rights and to the permanent abolition of the death penalty in all circumstances.<sup>38</sup>

Building on previous Action Plans, the **EU Action Plan on Human Rights and Democracy 2020-2024** commits to working towards the worldwide abolition of the death penalty. In countries where the death penalty still exists, it insists on the respect of minimum standards and working towards a moratorium on executions as a first step towards abolition.

<sup>36</sup> European Court of Human Rights, *Al-Saadoon and Mufdhi v the United Kingdom* – 61498/08 [2010] ECHR, paras 115 – 125.

<sup>37</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?Reference=CM/Rec\(2021\)2](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2021)2)

<sup>38</sup> <https://europeanlaw.lawlegal.eu/eu-guidelines-on-the-death-penalty/#:~:text=Where%20the%20death%20penalty%20is%20maintained%2C%20the%20EU,prescribed%20beforehand%2C%20this%20must%20be%20imposed%3B%20Mais%20itens>



The 57 participating States of the **Organization for Security and Cooperation in Europe (OSCE)**, building upon the norms and safeguards regarding the use of the death penalty adopted by the international community, have also made significant commitments, including to:

- a) Exchange information on the question of the abolition of the death penalty and to provide information on the use of the death penalty to the public.
- b) Where the death penalty is still in use, participating States have agreed that it can be imposed only for the most serious crimes and only in line with international commitments.
- c) To ensure the right to life, the right to a fair trial and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.
- d) Through OSCE Office for Democratic Institutions and Human Rights (ODIHR) to monitor trends and new developments regarding human rights standards and practices among OSCE participating states related to the death penalty, and to annually present the findings in the Background Paper on the Death Penalty across the OSCE Area.<sup>39</sup>

In the last couple of decades, international law has been further consolidated to ensure the protection of children against capital punishment. This is reflected both in the slew of rules and guidelines that act as safeguards against the death penalty in relation to children and in how customary international law has evolved.

## UN STANDARDS, SAFEGUARDS, RULES, GUIDELINES, RESOLUTIONS

- **Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty** (UN Economic and Social Council resolution 1984/50 endorsed by the UN General Assembly in resolution 39/118) was adopted without a vote, a sign of a strong consensus among nations. Although not legally binding, the Safeguards reaffirm legal and policy commitments and provide important guidance for states. Importantly, they provide that *“Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death...”*
- **The United Nations Standard Minimum Rules for the Administration of Juvenile Justice**, also known as the Beijing Rules, were adopted by General Assembly Resolution 40/33, of 29 November 1985. According to paragraph 17.2 of these rules, *“capital punishment shall not be imposed for any crime committed by juveniles”*
- **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty**,<sup>40</sup> adopted by General Assembly resolution 45/113 of 14 December 1990, also known as the Havana Rules, address incidents of death of a child deprived of liberty.
- **The United Nations Guidelines for the Prevention of Juvenile Delinquency**, adopted by General Assembly resolution 45/112 of 14 December 1990, also known as the Riyadh

<sup>39</sup> OSCE ODIHR Background Paper 2022, launched in December 2022: [https://www.osce.org/files/f/documents/2/6/527082\\_1.pdf](https://www.osce.org/files/f/documents/2/6/527082_1.pdf)

<sup>40</sup> OHCHR, “United Nations Rules for the Protection of Juveniles Deprived of their Liberty”, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty>

Guidelines, call upon states to enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons, as well as legislation to prevent the victimization of children and young persons, and establishes that *“no child or young person should be subjected to harsh or degrading correction or punishment measures (...) in any institutions”*<sup>41</sup>

- **The United Nations Guidelines for Action on Children in the Criminal Justice System**, also known as the Vienna Guidelines,<sup>42</sup> were adopted in 1997 to further strengthen the implementation of the Convention on the Rights of the Child and the protection of children’s rights in the administration of justice.

- **The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice**, adopted by General Assembly Resolution (A/RES/69/194, of 18 December 2014), call upon states to *“review, evaluate and, where necessary, update their national laws to ensure that, under legislation and practice, neither capital punishment nor life imprisonment without the possibility of release is imposed for offences committed by persons when they were under 18 years of age.”*<sup>43</sup> The Model Strategies also require that all deaths of children in detention facilities are reported and promptly and independently investigated.

- There have also been several resolutions on a moratorium on the use of the death penalty adopted by the UN General Assembly, which call on States *“not to impose capital punishment for offences committed by persons below 18 years of age”*, and not to impose the capital punishment on persons *“whose age above 18 years at the time of the commission of the crime cannot be accurately determined”*

## INTERNATIONAL LEGAL STANDARDS

General Comment 24 of the UN Committee on the Rights of the Child states: *“Article 37 (a) of the Convention reflects the customary international law prohibition of the imposition of the death penalty for a crime committed by a person who is under 18 years of age.”*<sup>45</sup>

Customary international law is one of the sources of general (non-treaty) international law. The Statute of the International Court of Justice defines customary international law as *“international custom, as evidence of a general practice accepted as law.”*<sup>46</sup>

Customary international law is made up of two elements - a widespread or general state practice and a general recognition that this practice is a matter of law (*opinio juris*). A rule of customary international law is binding on all states except those that have *“persistently objected”* to that rule.<sup>47</sup>

<sup>41</sup> <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/565/01/IMG/NR056501.pdf?OpenElement> – see paragraphs 52 to 54

<sup>42</sup> Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997

<sup>43</sup> [file:///C:/Users/Utilizador/Downloads/A\\_RES\\_69\\_194-EN%20\(3\).pdf](file:///C:/Users/Utilizador/Downloads/A_RES_69_194-EN%20(3).pdf) – see paragraph 36 b)

<sup>44</sup> Paragraph 7(d), UNGA Resolution on a moratorium on the use of the death penalty which was adopted on 16 December 2020, A/RES/75/183. See link: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/372/89/PDF/N2037289.pdf?OpenElement>

<sup>45</sup> Paragraph 79, UN Committee on the Rights of the Child, General Comment No.24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019. See footnote 29.

<sup>46</sup> Article 38 of the Statute of the International Court of Justice. See link: <https://www.icj-cij.org/en/statute>

<sup>47</sup> Amnesty International, “The Exclusion of Child Offenders From the Death Penalty Under General International Law”, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500042003en.pdf>

The prohibition of the use of the death penalty on children is by this definition accepted as being enshrined in customary international law for several reasons.<sup>48</sup>

- It is enshrined in several international treaties, both global and regional, and in international humanitarian law treaties ratified by a very large majority of States in the international community.<sup>49</sup>
- Most States, including those that retain the death penalty, do not use of the death penalty against children.<sup>50</sup>
- Executions of children are not very frequent. States that have carried out such executions tend to deny the fact or avoid the issue in the international community.<sup>51</sup>
- It is widely accepted that applying the death penalty to children violates a preemptory norm (*jus cogens*) of customary international law, a norm from which no derogation is permitted.<sup>52</sup> This is echoed by the Inter-American Commission on Human Rights which has stated that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime.”<sup>53</sup>

In conformity with international human rights law, both global and regional, international humanitarian law, and soft law in the form of guidelines, rules, resolutions, there is a consensus that:

- i. The prohibition of the death penalty applies to crimes committed by persons below the age of 18. Such persons can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time of the execution of the sentence.
- ii. If there is no reliable or conclusive proof of that the person was below the age of 18 years at the time of the committing the offence, he or she has the right to the benefit of the doubt and the death penalty must not be imposed.

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Presentation by Simon Walker, Chief of Rule of Law and Democracy Section (OHCHR), at the side event organized by Australia and ICDP in Geneva on 29 June 2022 titled “Youth and the Death Penalty,” at the sidelines of the 50th session of the UN Human Rights Council.

<sup>53</sup> Amnesty International, “The Exclusion of Child Offenders From the Death Penalty Under General International Law”, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500042003en.pdf>

- iii. Any death sentence imposed on children should be commuted to a penalty that is in conformity with human rights norms and standards.

It is widely recognized that by imposing the death sentence and/or by carrying out of the execution of a child, a whole range of fundamental rights protected under international human rights law are violated:

- **Right to life** is enshrined in Article 6 of the ICCPR. The UN Working Group on Arbitrary Detention issued an opinion concluding that the death penalty against a young person amounted to arbitrary deprivation of life,<sup>54</sup> as enshrined in Article 6 of the ICCPR.
- **Right to freedom from cruel, inhuman, or degrading treatment**, enshrined in Article 7 of the ICCPR and Article 37 of the CRC, as well as under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- **Right to liberty**, provided for by Article 9 of the ICCPR and Article 37 of the CRC. The United Nations Global Study on Children Deprived of Liberty,<sup>55</sup> submitted to the General Assembly in 2019, recognized that the deprivation of liberty constitutes a form of structural violence against children. The Study recommended, among other things, that capital and corporal punishment and life sentences should never be imposed on a child, that states should set a maximum penalty for children accused of crimes which reflects the principle of “*shortest appropriate period of time*” that children should never be subjected to solitary confinement, and that states should prioritize restorative justice, diversion from judicial proceedings and non-custodial solutions.
- **Best interest of the child**, enshrined under Article 3 of the CRC.
- **Right to protection from discrimination**, recognized by Article 2 of the CRC.
- **Right to respect for the views of the child**, including participation in administrative and judicial proceedings affecting the child, recognized by Article 12 of the CRC.
- **Right to freedom from violence, including neglect or negligent treatment, physical, psychological and sexual violence**, recognized by Article 19 of the CRC.

In the case of children whose parents are sentenced to the death penalty or executed, all the rights listed above are at risk. In addition, a child's right to special protection and assistance from the state must be safeguarded when a family member is subject to capital punishment. Both Article 20, as well as in Article 9 of the CRC, recognize a child's right to maintain personal relations and direct contact with both parents on a regular basis.

<sup>54</sup> Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021: Opinion No. 72/2021 concerning Abdullah al-Howaiti (Saudi Arabia) [https://www.ohchr.org/sites/default/files/2022-01/A\\_HRC\\_WGAD\\_2021\\_72\\_SA\\_AEV.pdf](https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_72_SA_AEV.pdf)

<sup>55</sup> OHCHR, “United Nations Global Study on Children Deprived of Liberty”, 2019, (A/74/136) <https://www.ohchr.org/en/treaty-bodies/crc/united-nations-global-study-children-deprived-liberty>

# Age determination: persisting challenges and recommendations

Although judicial executions of children are rare, they still happen. One of the main arguments used by countries that carry out executions of children is the difficulty of determining their age.<sup>56</sup> Age determination assessments are often unreliable when there is no clear evidence of age, such as a reliable birth certificate. Establishment of a sound and reliable birth registration system is crucial to provide such evidence and safeguard children's rights.

Articles 7 and 8 of the CRC recognize a child's right to have his or her right to an identity protected, respected and preserved. According to General Comment No. 24 of the UN Committee on the Rights of the Child, *"a child who does not have a birth certificate must be provided with one promptly and free of charge, whenever it is required to prove age."*<sup>57</sup> Countries have committed to provide legal identity for all, including birth registration with the adoption of the 2030 Agenda for Sustainable Development.

Although international standards, commitments and guidance in this area are clear, serious challenges persist. Globally, of the 237 million children under the age of five - almost one in three - lack a legal proof of identity. These include 166 million who are not registered and another 70 million who do not have a birth certificate. To put this into perspective, of the 383,000 children born every day, 115,000 remain unregistered and another 46,000 uncertified.<sup>58</sup>

There are, not surprisingly, many children facing the criminal justice system who have not been registered at birth and who lack a birth certificate to prove their legal identity and their age. Without universal birth registration and certification, criminal justice systems may treat children as adults and fail to apply due process guarantees and legal safeguards to which children are entitled under international human rights law.<sup>59</sup>

Importantly, General Comment No. 24 of the UN Committee on the Rights of the Child provides for alternative documentary and non-documentary methods to determine a child's age when there is no

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<sup>56</sup> ICDP research.

<sup>57</sup> Committee on the Rights of the Child, "General Comment No. 24 (2019) on children's rights in the child justice system," (CRC/C/GC/24), paragraph 33, p.7. For link to the document, please see footnote 29.

<sup>58</sup> Presentation by Kirsten Di Martini, Senior Child Protection Adviser (UNICEF), at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled "Youth and the Death Penalty," at the sidelines of 50th session of the UN Human Rights Council, and it is echoed by the UN Global Study on Children deprived of liberty.

<sup>59</sup> Presentation by Kirsten Di Martini, Ibid.

birth certificate. It states, *“If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary.”*<sup>60</sup> It states that authorities should allow for interviews or testimonies with persons close to the child who may know the age of the child, including the child’s parents, teachers, religious or community leaders.

If none of the above-mentioned measures are successful in determining the child’s age, General Comment No. 24 provides for the possibility of a comprehensive assessment of the child’s physical and psychological development, with the caveat of ensuring respect for the child’s human rights and avoiding any medical methods that may be inaccurate or with wide margins of error. It specifies that medical interventions must only be carried out by specialized professionals “skilled in combining different aspects of development” in a prompt, child, and gender sensitive and culturally appropriate manner, and in a language that the child understands.<sup>61</sup>

Importantly, in situations where the age assessment is not reliable or conclusive the General Comment No. 24, unequivocally, states that the child should be given the benefit of doubt and not held criminally responsible: *“(I)f there is no proof of age and it cannot be established that the child is below or above the minimum age of criminal responsibility, the child is to be given the benefit of the doubt and is not to be held criminally responsible.”*<sup>62</sup> In other words, when in doubt, the person should be considered a child and granted all safeguards guaranteed in law.

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<sup>60</sup> UN Committee on the Rights of the Child, General Comment No.24, Paragraph 33, p.7.

<sup>61</sup> General Comment 24, paragraph 34, p.8.

<sup>62</sup> General Comment 24, Paragraph 24, p.6.

# Children of parents facing the death penalty: enduring stigma, discrimination, physical, psychological victimhood by association

The death penalty has wide-reaching impact beyond the individuals who are sentenced to death or executed. It impacts people associated with those sentenced. Hence the consequences the death penalty can have on children is not limited to children who are sentenced to death or executed. They also include children whose parents or close relatives have been sentenced to death or executed. Moreover, in some cases, individuals under the age of 18 facing the death penalty, may also have children of their own.<sup>63</sup> Unfortunately, the abolitionist debate has neglected the children of those sentenced to death or executed.

The UN Human Rights Council Panel on the human rights of children of parents sentenced to the death penalty or executed, has explicitly addressed this question of how children are impacted when their parents are sentenced to death or executed. This is reflected in its resolution 22/11.<sup>64</sup> In 2013, another Panel discussion<sup>65</sup> examined the negative impact of the death penalty on the human rights of children whose parents have been sentenced to death or executed. The discussion referred to important research on a range of negative effects that included emotional trauma that can lead to long-term damage to mental health. This intervention promoted a better understanding of international human rights norms and standards. It helped focus attention on the protection and assistance that these children may need in order to fully enjoy their human rights.

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<sup>63</sup> Presentation by Laurel Townhead, Representative (Human Rights and Refugees), Quaker United Nations Office, at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled "Youth and the Death Penalty," at the sidelines of the 50th session of the UN Human Rights Council.

<sup>64</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/22/L.18](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/22/L.18)

<sup>65</sup> United Nations General Assembly, Summary of the panel discussion on the human rights of children of parents sentenced to death penalty or executed, A/HRC/25/33, 18 December 2013: [https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-33\\_en.doc](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-33_en.doc)



Children whose parents are sentenced to death or who have been executed face many of the same problems as the children whose parents are involved with the criminal justice system.<sup>66</sup> Both sets of children are involved, albeit indirectly, in the various stages of the legal processes that their parents go through, from the moment of arrest to the final sentencing by a judge.<sup>67</sup> However, when the death penalty is either a possibility or a reality, the impact on the children is more severe, and raises concerns distinct from those faced by the children whose parents are not subject to capital punishment. As one of the panelists said - *“Just as the death penalty is a unique punishment among punishments, so are children of those facing death unique among children of prisoners.”*

Losing a parent as a result of a state-sanctioned execution is devastating for a child. The child's feeling of loss and abandonment begins even before the execution because restrictions on visiting or communication limit their contact with their imprisoned parent. Additionally, the child has to endure the uncertainties and the emotional ups and downs of a lengthy process, from arrest to trial and sentencing, through multiple appeals, and execution, which can take years or even decades. If, when finally, an execution takes place, the family is not notified in advance, children are robbed of the possibility of saying goodbye to their parents.<sup>69</sup>

When one parent murders the other, such as in cases of domestic violence, involving children as witnesses in court proceedings, can contribute to the trauma. When such cases lead to a death penalty, the State deliberately orphans the children, executing one parent for killing the other.<sup>70</sup>

Children of parents who have been sentenced to death or who have been executed may feel a double abandonment: first by their parents and then by the anti-death penalty activists who would have supported them while their parents were on death row but who, after the execution, would have moved on to focus on to other cases.<sup>71</sup>

Children of parents who are subject to capital punishment are often victims of social prejudice, discrimination, or stigmatization. This can have serious consequences for their physical and psychological health, as they may develop a sense of shame and guilt, and become socially isolated. These negative effects can also impact their education and opportunities in life. The loss of a parental figure may also put pressure on children to enter the workforce prematurely to provide for their family, putting them at risk of exploitative labor.

Although there may be variations in the specific circumstances and individual situations of each child there are certain common patterns that can be identified, including:

**- Children whose parents are sentenced to death or executed endure a unique burden resulting from State action:**

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<sup>66</sup> Oliver Robertson, “What happens to the child whose parent is sentenced to death?”, <https://www.penalreform.org/blog/what-happens-to-the-child-whose-parent-is/>

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Presentation by ICDP Commissioner Marta Santos Pais at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled, “Youth and the Death Penalty,” at the sidelines of the 50th session of the UN Human Rights Council.

<sup>70</sup> Oliver Robertson, “What happens to the child whose parent is sentenced to death?”, <https://www.penalreform.org/blog/what-happens-to-the-child-whose-parent-is/>

<sup>71</sup> Ibid.

Unlike any other forms of punishment for a criminal, the execution of a parent permanently deprives a child of the chance to have a relationship with their parent. The child faces first the possibility and then the reality of losing a parent to a violent death carried out by the State. The experience is made more painful by the indifference or hostility of the public and authorities who do not recognize the child's trauma and fail to provide the care and support they need.

Existing research shows that children whose parents are sentenced to death or executed consistently suffer major psychological and emotional consequences.<sup>72</sup>

**- Children of parents sentenced to death or executed are, uniquely, forced into a conflicted relationship with the State:**

Although executions are legal under national law, they remain deliberate, premeditated killings by the State. This sets them apart from any other parental separation or loss a child may suffer.

**- Children of parents sentenced to death or executed can be socially isolated or ostracized:**

These children are often stigmatized by association, this can compromise their protection from discrimination and abuse, and undermine the care they are entitled to receive.

**- Children of parents sentenced to death or executed are often left unprotected or without adequate support and care:**

States which sentenced parents to death have a responsibility to ensure that the rights of their children are effectively protected and fulfilled, that they have adequate care and assistance. Yet, in most cases children whose parents are executed receive little or no state assistance.

**- Children whose parents are on death row face particular difficulties in meeting them:**

Children have a right to maintain a personal relationship and regular contact with their parent while they are alive, unless this is against the child's best interests. Yet, security restrictions and procedures for death row prisoners often make this difficult or impossible.

**- Children of parents sentenced to death or executed endure particular emotional and psychological distress:**

This can be because of the ever-present threat of the execution or the execution itself.<sup>73</sup>

<sup>72</sup> Together against the death penalty (ECPM), "One Month Before... The 17th World Day Against the Death Penalty: Focus on the Rights of Children of Parents Sentenced to Death", <https://www.ecpm.org/en/one-month-before-the-17th-world-day-against-the-death-penalty-focus-on-the-rights-of-children-of-parents-sentenced-to-death/>

<sup>73</sup> These and other impacts are gathered in the report by QUNO titled *Lightening the Load of the Parental Death Sentence on Children* (2013) available in English, French, Spanish, Arabic, Farsi and Japanese.

Turning the spotlight on how a parent's execution impacts children can inform the broader efforts towards the ending the death penalty. The child's experience of the death penalty can help humanize those sentenced to death. It can help demonstrate that death row inmates are not just criminals, but people capable of giving and receiving love, human beings, entitled to human rights. This approach can act as a reminder that the death penalty is state sanctioned violence with far reaching and long term effects that go well beyond the confines of prison walls.

# Strategic actions to address persisting concerns

There have been strategic actions, undertaken by various organizations, to advance the abolition of the death penalty and the prohibition on applying it to children. The following table highlights some of these actions, which serve as excellent examples of effective advocacy that other organizations working to abolish capital punishment could consider.

## **Upholding international human rights standards:**

The OCHR actively opposes the use of the death penalty in all circumstances and advocates for its universal abolition through various means. These include urging countries to adopt moratoriums, make legislative amendments to abolish the death penalty in law and practice, and ratify the Second Optional Protocol to the ICCPR which aims at the abolition of the death penalty. As Simon Walker has emphasized, the OCHR also encourages countries that retain the death penalty to respect their obligations under international human rights law, which includes the prohibition against subjecting children to capital punishment in any circumstances. The new UN High Commissioner for Human Rights, Volker Türk, also supports this position and has committed to promoting the abolition of the death penalty and, through his mandate, making it a thing of the past.<sup>74</sup>

## **Promoting a universal system of birth registration:**

UNICEF's Kirsten Di Martini has highlighted that establishing an accurate and reliable proof of age is crucial to preventing children being tried as adults or being subject to a death sentence or execution. To advance this, in 2021 UNICEF supported over 70 countries to accelerate progress towards universal birth registration. In many countries civil registration laws have provisions that disadvantage single or unwed mothers when registering their children's birth. UNICEF's approach includes advocating for and providing technical support to eliminate gender discrimination in civil registration laws.

<sup>74</sup> OHCHR, Closing Ceremony Of The Eighth World Congress Against The Death Penalty, <https://www.ohchr.org/en/statements/2022/11/closing-ceremony-eighth-world-congress-against-death-penalty>

### **Enhancing understanding and safeguarding the human rights of children with a parent sentenced to death, on death row or executed:**

Laurel Townhead said that QUNO's first steps were to gather the people who were working on this subject and working directly with children who had a parent sentenced to death or executed. This work resulted in identifying the patterns of impact of the death sentence on children and youth, highlighted in the previous chapter.

- i. Step one was about better understanding these impacts and raising awareness on this issue, including through the organization of a UN Human Rights Council Panel, in September 2013,<sup>75</sup> mandated through a consensus resolution.
- ii. Step two was a focus on the relevant international law and understanding the impact of the death penalty on children, and the related human rights violations. Building an understanding of how a child's rights are impacted when their parent is being sentenced to death, was an important part of this. Greater clarity has emerged through the work of the UN Human Rights Committee and the UN Committee on the Rights of the Child, the work of ICDP Commissioner Marta Santos Pais in her role as UN Secretary General's Special Representative on Violence against Children, as well as UN Human Rights Council resolutions and relevant OHCHR reports.<sup>76</sup>
- iii. Step three was to draw together these developments in a study commissioned by QUNO in 2019, titled "Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis."<sup>77</sup> The report concluded: *"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. States should instead implement ways to deal with crime without resorting to capital punishment. Alternatives exist for sanctioning crime that do not have the irreversible finality of execution"*

The publication includes a set of Briefing Tools for Practitioners<sup>78</sup> with information and recommendations for defense lawyers, sentencers, legislators, the media, prison staff, teachers and death penalty campaigners.<sup>79</sup>

Within six months of publishing this paper, QUNO was aware of four cases in different parts of the world in which its analysis had been used as part of the arguments at the sentencing stage.

<sup>75</sup> A/HRC/25/33 - [https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-33\\_en.doc](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-33_en.doc)

<sup>76</sup> These developments are briefly summarized in a paper by QUNO titled: Children of Incarcerated Parents - International Standards and Guidelines (2020) available in English, French, Spanish and Japanese.

<sup>77</sup> See link to the report: <https://quno.org/resource/2019/2/protection-rights-children-parents-sentenced-death-or-executed-expert-legal-analysis>.

<sup>78</sup> See link to the briefing tools: <https://quno.org/resource/2019/7/briefing-tools-unseen-victims>

<sup>79</sup> Presentation by Laurel Townhead, Representative (Human Rights and Refugees), Quaker United Nations Office, at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled "Youth and the Death Penalty" at the sidelines of the 50th session of the UN Human Rights Council.

# Recommendations

## **1. Upholding international human rights standards and strengthening adherence to international treaties and their effective implementation in order to safeguard the right of the child to freedom from the death penalty.**

The international community has long pledged to abolish the death penalty for people for offences committed before the age of 18. This legal imperative is confirmed by the widespread ratification of international human rights conventions, including the Convention on the Rights of the Child, which is in force in 196 states. In line with these standards, no child should face the death penalty, regardless of the age at the time of trial, sentencing or execution of the sentence. If there is no reliable or conclusive proof of the person's age at the time the offence was committed, they should be given the benefit of the doubt, and the death penalty should not be imposed. If a child is sentenced to death, their sentence should be commuted consistent with human rights standards.

Work should be undertaken to widen adherence to international conventions on the abolition of the death penalty. There should be support for the effective implementation, starting with the urgent introduction of a moratorium and followed by the enactment of legislation, to explicitly prohibit the use and imposition of the death penalty on children.

## **2. Raising public awareness and supporting capacity building initiatives to safeguard the right of the child to freedom from the death penalty.**

Over the past years, significant positive developments have strengthened the movement towards the universal abolition of capital punishment. Adherence to relevant international conventions has been increasing incrementally and there is growing support for the introduction of a moratorium on the use of the death penalty. To effectively safeguard the right of the child to freedom from the death penalty, this process must be widely publicized and further consolidated. To achieve this goal, it is important to raise public awareness of progress made and of good practices that have helped protect the right of the child to freedom from the death penalty, at the global, regional, and national levels. Victims and their families should be involved in these actions. Furthermore, steady capacity building initiatives should be carried out with relevant actors, including parliamentarians, governmental officials, the judiciary, lawyers, medical experts, and civil society, to mobilize greater support and address persisting difficulties.

## **3. Promoting the periodic exchange of information and cross-fertilization of experiences and reinforcing coordinated action at the regional and international levels to protect children from the death penalty.**

To recognize, document, and disseminate positive developments, to reflect on lessons learned

and factors of progress and to mobilize support to influence positive change within and across nations, there should be periodic meetings at regional and international fora on children's freedom from capital punishment and on the impact of the death penalty on children whose parents have been sentenced to death or executed. This will help widen the adherence to, and effective implementation of, relevant international human rights standards, as well identify areas where technical advice and assistance may be required. For instance, technical advice and assistance could be provided for promoting legal and institutional reforms, a moratorium on executions as a step towards abolition, and safeguarding children's rights, including the right to freedom from discrimination, the right to freedom from any form of violence including inhuman treatment, and from the death penalty. Periodic regional and international meetings will help keep these concerns at the center of the policy agenda, monitor and consolidate progress in the respect and fulfilment of children's rights, and ensure their protection from any risk associated with the death penalty.

#### **4. Supporting, funding, and disseminating research, to promote the adoption of evidence-based approaches.**

The situation of children facing the death penalty is still frequently shrouded in secrecy, with imprecise information and weak data. In many countries, it is difficult to access precise information about the exact number of children sentenced to death, on death row or executed. In some cases, such information is considered a state secret. It is often challenging to confirm a child's age at the time of the offence, during the trial, or when sentenced to death. Additionally, it is difficult to ascertain whether children have enjoyed the guarantees and legal safeguards they are entitled to or been given the opportunity to seek pardon or commutation of their sentence. Information is often not disaggregated by age and gender, compounding the risk for those who are already powerless. Girls and young women face a greater risk of harsh sentences for betraying traditional gender roles, such as in cases of adultery or if they have acted in self-defense in situations of domestic abuse or sexual violence.

Having reliable, timely, accurate and disaggregated data on these issues is critical to overcome persisting challenges and to inform future progress. It is essential to establish evidence-based systems to document, analyze and disseminate information on positive developments and successful strategies that have helped overcome persistent challenges.

This includes information on

1. National legal provisions banning capital punishment for children.
2. Decisions to pardon or commute death sentences imposed on persons below the age of 18 years.
3. Age determination mechanisms to avoid treating children as adults and ensure children can genuinely enjoy their fundamental rights and legal safeguards that they are entitled to.
4. Measures that strengthen child-friendly and gender-sensitive justice systems, including restorative justice approaches that have successfully helped shift to alternatives to capital punishment.

More research and data are also needed on the impact of the death penalty on children whose parents or family members have been sentenced to death, are on death row or have been execut-



ed. To address this issue, it is important to ensure that before any death sentence is imposed on a parent, the situation of their children is carefully considered taking into account the potential impact on their human rights. This will make it possible to develop approaches guided by the best interests of the child and build protective environments and prevent or address the stigma, trauma, discrimination and social exclusion these children may face. This approach can also inform states' policies for providing protection, care, and psychological and material support to these children.<sup>80</sup> Such an approach also opens avenues for the consideration of alternative sentencing and restorative justice.

### **5. Investing in child-friendly and gender-sensitive justice systems.**

States should prioritize child-friendly and gender-sensitive justice systems, that focus on prevention and early intervention, diversion and non-custodial measures, therapeutic approaches, post-release support and restorative justice.<sup>81</sup>

Children involved with the criminal justice system should be held accountable in accordance with international norms and standards. They must be protected from the death penalty and their sense of dignity and worth should be effectively safeguarded.

Every child has the right to access justice that is timely and affordable, and that enables them to claim and receive a remedy for violations of their rights, to legal safeguards and a fair trial. To ensure children can fully enjoy their human rights, it is important to respect their dignity and ensure their best interests, including freedom from capital punishment, which is contrary to those principles.

### **6. Safeguarding the right of the child to an identity and investing in civil registration systems.**

The Convention on the Rights of the Child mandates that all States must ensure the registration at birth of every child.<sup>82</sup> In addition States are required to provide appropriate protection and assistance to any child illegally deprived of any element of identity, with a view to speedily re-establishing that identity.<sup>83</sup>

A birth certificate is critical proof of a person's age and legal identity.<sup>84</sup> Protecting a child from being prosecuted as an adult and possibly sentenced to death in any criminal justice system requires an accurate and reliable proof of age. Hence, establishing a sound and reliable national birth registration system is essential.

With the adoption of the 2030 Agenda for Sustainable Development, all states pledged to provide legal identity, including birth registration, to all by 2030. Many countries have made

<sup>80</sup> Presentation by ICDP Commissioner Marta Santos Pais at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled "Youth and the Death Penalty" at the sidelines of the 50th session of the UN Human Rights Council.

<sup>81</sup> Ibid.

<sup>82</sup> CRC Article 7, SDG 16.9

<sup>83</sup> CRC Article 8

<sup>84</sup> Presentation by Kirsten Di Martini, Senior Child Protection Adviser (UNICEF), at the side event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled "Youth and the Death Penalty" at the sidelines of the 50th session of the UN Human Rights Council.

significant progress towards this goal. There are positive national experiences and greater progress, informed by valuable lessons learned. However, much remains to be done. As previously mentioned, nearly one in three children lack proof of legal identity, including 166 million children who are not registered and another 70 million who do not have a birth certificate.

Children who are not counted remain hidden and vulnerable with their rights at risk of being ignored. They are often neglected when services are planned, ignored when they seek support from institutions and unnoticed when their human rights are violated. It is imperative to urgently address this situation to prevent any risk to safeguarding their human rights, including their right to life when they are accused of an offence punishable by death, and when they face unsurmountable barriers to accurately prove their age.

### **7. Safeguarding the rights of the child during age determination assessments.**

When conducting these assessments, the child's best interest should be a primary consideration. When regulating such assessments, policy makers must recognize that children are children first, and not just juvenile offenders. The assessments must have safeguards to prevent delays in procedures, as these delays could result in children losing the protection to which they are entitled. Children whose exact age is unknown, but who are undoubtedly below the age of 18, should not be subject to these assessment procedures. While these assessments are ongoing, children should not be detained, to avoid the negative consequences this may have on their rights and development. The presumption of being a child must be acknowledged so that during these assessments, they are treated as children and protected as children. Such assessments must be conducted by specialized professionals, in a prompt, child and gender sensitive and culturally appropriate manner, and in a language the child understands. If the only way to determine the child's age is through a medical examination, the child's rights and dignity must be fully respected during the process, and the least intrusive means used. In addition, children should be allowed examination by professionals of the same sex.

### **8. Strengthening strategic alliances to mobilize support for the prohibition of the use of the death penalty against children and for the protection of the rights of children concerned.**

To consolidate progress in the movement towards the abolition of the death penalty and ensure children's freedom from capital punishment, it is important to involve all relevant stakeholders. These stakeholders include international and regional organizations, governments championing this cause, parliamentarians, national human rights institutions, the judiciary and legal professionals, medical experts, social workers and other relevant experts, human rights defenders and civil society organizations, faith-based organizations, and religious leaders, as well as victims and their families.

Their individual and collaborative actions are essential to raise awareness about pressing concerns, to share information about positive experiences and factors of progress, as well as to mobilize wide public support to end capital punishment, and to ensure effective respect, protection and fulfilment of the rights of the child – who is either facing the death penalty or whose parents or family members have been sentenced to death or executed.

# Conclusion

The situation of children and youth impacted by the death penalty remains on the periphery of the policy agenda. This report endeavors to address this lacuna by placing children's freedom from the death penalty at the heart of the debate. There is an urgent need to ensure that no child is at risk of being sentenced to death or suffering the impact of the death penalty system. While most states no longer carry out executions of children, several detain children on charges of death penalty-applicable offences, sentence them to death, and subject them to cruel, inhuman treatment including while awaiting trial, during imprisonment and during the appeal process while on death row.

Taking note of the recommendations above, states that have not abolished the death penalty for crimes committed by individuals below the age of 18 years should take the following actions:

- Prohibit in law and practice, the use and imposition of the death penalty on children, in accordance with the Convention on the Rights of the Child and other international human rights standards.
- Immediately impose a moratorium on executions of persons convicted of crimes committed before the age of 18.
- Commute death sentences imposed on children to a penalty that fully conforms with human rights standards.
- Allow children sentenced to death to seek pardon or commutation of their sentences.
- Strengthen child-friendly and gender-sensitive justice systems and promote restorative justice approaches in line with international human rights standards.
- Safeguard the right of the child to freedom from all forms of violence, such as torture, ill-treatment, inhuman or degrading treatment or punishment, including capital punishment.



# **Presentations by panelists at the Side Event organized by ICDP and the Government of Australia in Geneva on 29 June 2022 titled, “Youth and the death penalty,” at the sidelines of the 50th ses- sion of the UN Human Rights Council**

**Marta Santos Pais, Commissioner, International Commission against the Death Penalty  
and former UN Secretary General’s Special Representative on Violence against Children**

## **1. Introduction**

Distinguished Guests, dear participants,

A warm welcome to you all. Many thanks to the Permanent Mission of Australia for convening this meeting with the International Commission against the Death Penalty. Many thanks to our excellent Panelists for your strong commitment and for our fruitful collaboration.

Allow me to start by conveying warm wishes from ICDP President Navi Pillay. Although unfortunately unable to join us today, Navi Pillay is very eager to hear about the outcomes of our deliberations. As former HC, as a Judge and as ICDP President, Navi has expressed deep concern at the continued execution of children. She is confident our recommendations will help to decisively enhance children’s protection and successfully move towards the universal abolition of the death penalty – for children and for everyone else.

As you know, the ICDP was set up in 2010 to mobilize political will at the highest level towards

the abolition of the death penalty: (enacting a legal ban, introducing a moratorium on pending executions, achieving pardon or commutation when death sentences have been issued). ICDP is composed of 24 Commissioners: highly respected leaders from all parts of the world, with a long experience in international and domestic affairs, in international law, justice, human rights, and in the academia. ICDP works in close collaboration with a cross regional Support Group – 23 states from all corners of the world—. Indeed, the death penalty is a global concern. Today’s meeting is organized in collaboration with ICDP Support Group, including naturally Australia which is hosting our meeting.

### 1. Positive developments

a) We are meeting at a time marked by visible progress towards the universal abolition of the death penalty:

- As you know, more than two thirds of the world’s countries, have abolished the death penalty, either in law or in practice.
- Over the recent past, a significant number of states reinforced this movement with the introduction of crucial legal reforms to ban capital punishment – in Chad (May 2020), the Central African Republic (May 2022), Kazakhstan (January 2021), Malawi (April 2021), Papua New Guinea (January 2022) and Sierra Leone (July 2021).<sup>85</sup>
- Other states have formally pledged to achieve this goal: more recently, Zambia (May 2022) and Malaysia (June 2022).
- Similarly, the recent past was marked by an increased number of state parties to the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty - over the past year, Armenia and Kazakhstan have ratified this treaty.

### 2. Persisting challenges

Unfortunately, however, pressing concerns persist.

- According to recent reports, in 2021 there was a slight increase in the number of executions (20%) and in the number of death sentences (close to 40%); the majority of the world’s population still live in countries that retain the death penalty; and in many cases, capital punishment is surrounded by secrecy and legal uncertainty.
- People with mental or intellectual disabilities continue to be sentenced to death. The number of women on death row remains high, while some executions were carried out in some countries.<sup>86</sup>
- Moreover, capital punishment remains a serious risk and, in some cases, a tragic reality for children: both for juvenile offenders sentenced to death, and for children whose parents or caregivers are on death row or have been executed.

Sadly, the situation of children remains on the periphery of the policy agenda. We are confident that today’s event will help to raise awareness and enhance support to prevent and bring an end to the use of the death penalty when children are at stake.

<sup>85</sup> Progress has been particularly important in Africa – Chad, CAR, Malawi, Sierra Leone, and the recent announcement by Zambia to follow soon. This builds upon the important GC3 by the African Commission on Human Rights and People’s Rights, in 2015, which highlighted that “international law requires that those states that have not yet abolished the DP to take steps towards its abolition to secure the rights to life and dignity, in addition to other rights e.g., to be free from torture and cruel and inhuman or degrading treatment.”

<sup>86</sup> For example, 8 in Egypt, 14 in Iran; in Tunisia, women constitute 6% of those sentenced to death.

### 3. Placing children's rights at the heart of the policy agenda

Why is it important to place children's rights and concerns at the heart of this debate? I would like to highlight three main reasons.

First, the international community has for long pledged to ban capital punishment for offences committed by persons below the age of 18. We must honor this legal imperative.

The Convention on the Rights of the Child, adopted more than 30 years ago and in force in 196 countries (virtually all countries of the world), is a fundamental reference in this regard.

But the truth is that long before the Convention, other international standards had recognized this right<sup>87</sup> - including in 1966 the ICCPR. And since then, it has been systematically reaffirmed:

- by new legal instruments, for instance in the criminal justice area, (e.g., Model Strategies and Practical Measures on VAC in the Criminal Justice System<sup>88</sup>).
- and by a wide range of human rights bodies – including the Human Rights Council.<sup>89</sup>

What these international standards stress, is clear:

- iv. In the case of offences committed by persons below the age of 18, the prohibition of the death penalty applies. And it applies regardless of the age of the alleged offender at the time of the trial, of the sentencing or at the time of the execution of the sentence.
- v. If there is no reliable or conclusive proof of the person's age at the time of the commission of the offence, he or she has the right to the benefit of the doubt and the death penalty must not be imposed.
- vi. Thus, any death sentence imposed on such a young person should be commuted to a sanction that is in full conformity with human rights standards.

Secondly, there are positive developments and good practices around the world which constitute a valuable source of reflection and inspiration. We must document, share, and disseminate these good practices and build upon their unique potential to influence positive change.

Indeed, there is a lot on which to capitalize, including:

- national legal provisions banning capital punishment for children.
- decisions of pardon or commutation of death sentences imposed for crimes committed by persons below 18 years of age.
- age determination mechanisms to avoid treating children as adults and to ensure that children genuinely enjoy the legal safeguards that they are entitled to.
- and overall, lessons learnt from across the world to help consolidate progress.

<sup>87</sup> ICCPR article 6 par. 5 (GA Resolution 2000 A (XXI), of 16.12.1966); Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC resolution 1984/50 of 25 May 1984)

<sup>88</sup> Model Strategies and Practical Measures on the Elimination of VAC in the Criminal Justice System, adopted by the General Assembly 69/194

<sup>89</sup> Treaty bodies e.g., CRC and HR Committee

There is a third important reason. Despite progress made, children continue to be confronted with serious risks which need to be urgently prevented and addressed.

As you know, in some countries, the death penalty is still lawful and continues to be imposed on children. In 2021, at least 87 juvenile offenders were under a death sentence and 4 juveniles were executed for crimes allegedly committed before they reached the age of 18.

The situation of these juveniles is frequently surrounded by imprecise information and inaccurate data:

- it is hard to access the exact number of children sentenced to death, on death row or executed; in some countries, it is considered state secret.
- it is challenging to confirm their age (at the time of the commission of the offence, when brought before trial, when sentenced to death).
- and it is difficult to clarify if they were able to enjoy the legal safeguards they are entitled to or given the opportunity to seek pardon or commutation of their sentence.

These challenges seem to grow in the case of young women. While it is difficult to access disaggregated information by age and gender, available information show they are in double jeopardy: due to their gender and powerlessness, they risk harsh sentences for betraying traditional gender roles, including in the case of adultery and when they act in self-defense from domestic abuse and sexual violence.<sup>90</sup> This is an area where research and action are urgently needed!

#### **4. The situation of children whose parents or care givers have been sentenced to death or executed.**

There is still another fourth major concern we must vigorously address: the tragic impact of the death penalty on children whose parents or family members have been sentenced to death or executed. Their situation remains largely invisible and neglected. And yet, it has a long-lasting impact on children's rights and development.

The loss of a parent is deeply traumatic for a child. But when it results from a State-sanctioned execution, it is especially puzzling and frightening.

- The process from trial to imprisonment, at times with multiple and lengthy stages and appeals, is extremely painful and exhausting.
- Children experience agonizing levels of stress and anxiety as the execution is announced, delayed, appealed, delayed again... Sometimes for years or even decades.
- Family visits and contacts may be forbidden, especially when those on death row are kept in solitary confinement.
- In domestic violence cases where the death of an intimate partner has occurred, children may be required to stand as witnesses in court. Their sense of guilt is endless as their testimony may contribute to a death sentence of their own parent.

<sup>90</sup> AI 2022: 24 women have been executed, including 8 in Egypt and 14 in Iran, while many have been sentenced to death: in Maldives, Bangladesh, Indonesia, Malaysia, Pakistan, in Tunisia (6%of sentenced to death), Guyana and US (48)



- Although these children have done nothing wrong, they feel blamed and encircled by prejudice, discrimination, and stigma. And they endure a long-lasting experience of uncertainty, loneliness, and hopelessness.

Traumatized and with low self-esteem, they suffer from constant nightmares or loss of sleep; they lose concentration and interest in school and are hardly engaged in recreation or play. Some feel pressed to support their family and replace the breadwinner, engaging in risky labour activities.

Unresolved grief and trauma following a parent's execution can make it hard for these children to become good parents later in life and the death penalty ends up having a lasting intergenerational impact.

## 5. Breaking the vicious cycle

Daunting as this reality may be, it is not inevitable. We can break this vicious cycle and invest in evidence based and human rights-based solutions. Two steps are urgent:

Gathering accurate, reliable, and timely data and promoting sound research to inform legal, policy and judicial decisions; to mobilize public opinion and to generate the needed support and action for these children to enjoy their fundamental rights.

And ensuring that the child's best interests always prevail. This will help to build a protective environment, prevent discrimination and stigma, and provide the services these children urgently require.

One important measure is to ensure that, before any death sentence is imposed on a parent, due consideration is given to:

- the situation of their children
- and to the potential impact that decision may have on children's human rights.

This opens avenues for the consideration of an alternative sentencing and restorative justice approaches. And in fact, there are cases where the impact of a death sentence on children's wellbeing has been used to successfully argue for a non-capital sentence.

I am confident that, benefiting from the excellent knowledge and expertise of our panelists and joining hands together with you all, we will be able to make steady progress.

And there are strategic opportunities in the months ahead, with the preparation of the upcoming report of the SG on the question of the death penalty, with the upcoming Human Rights Council debate on Human rights and the administration of justice, including juvenile justice, with the negotiation of the GA resolution on a moratorium on the use of the death penalty, with the 8th World Congress against the Death Penalty, to be held next November in Berlin.

Moreover, ICDP will be working on a report to build upon today's meeting and to consolidate further evidence to successfully address these important questions. We look forward to collaborating closely with you in the steps ahead.

**Kirsten di Martini, Senior Child Protection Adviser, UNICEF (online)**

Your Excellency,  
Distinguished speakers and guests,  
Ladies and gentlemen,

- On behalf of UNICEF, I would like to thank the Australian government and the International Commission against the Death Penalty (ICDP) for inviting me to speak at this Side-event of the UN Human Rights Council on ‘Youth and the death penalty’.
- The most recent report by the UN Secretary General on the “*Question of the Death Penalty*” in 2020 confirms the trend towards the universal abolition of the death penalty indicating that some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice.
- This is a testament to the strong consensus and recognition amongst the majority of the States that the death penalty undermines human dignity, and that its abolishment is key to the full enjoyment of human rights by all as recognized in international human rights law.
- Yet a minority of States continue to apply the death penalty, including for offences committed by persons below 18 years of age, contrary to their international human rights law obligations.
- The application of the death penalty to children (all persons under 18 years of age as defined in the CRC), or to persons who were under 18 years of age at the time the offence was committed, is **unequivocally prohibited under international human rights law**.
- The use of the death penalty **constitutes a grave violation** of Articles 6 and 37 (a) of the CRC in particular:
  - Article 6.1. which states that “*Parties recognize that every child has the inherent right to life*” and,
  - Article 37 (a) which states that “*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age*”.
- Similarly, Article 6.5 of the International Covenant on Civil and Political Rights states that “*the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*”
- The text is clear: it means that the death penalty may not be imposed for a crime committed by a person who was under 18 years at the time of the commission of the offence, regardless of the persons age at the time of the trial or sentencing or of the execution of the sentence (CRC/C/GC/24).

- In its most recent resolution on the issue in 2020 (A/RES/75/183, 16 December 2020) the UN General Assembly has again called for a Moratorium on the Death Penalty, with an unprecedented number of countries – 123 – voting in favour.
- This resolution explicitly calls on States *“not to impose capital punishment for offences committed by persons below 18 years of age”*.
- The 2020 resolution also calls on States not to impose capital punishment on persons *“whose age above 18 years at the time of the commission of the crime cannot be accurately determined”*.
- This brings in the criticality of establishing proof of age conclusively through birth registration and emphasizes the particular concern in situations where children alleged as, accused of, or recognized as having infringed the penal law (children in conflict with the law) have not been registered at birth and do not have a birth certificate to prove their legal identity and age.
- When no clear proof of age exists, and the actual age is disputed, children are at risk of being tried and sentenced as adults. So even in States that limit the death penalty to adults, children may be at risk of being sentenced to death.
- Globally, 237 million children under five (35%; almost 1 in 3) lack proof of legal identity – including 166 million who are not registered, and another 70 million who do not have a birth certificate.
- To put this into perspective, out of 383,000 children born every day, 115,000 remain unregistered, and another 46,000 remain uncertified.
- In the absence of universal birth registration and certification, criminal justice systems often treat children as adults and fail to apply the due process guarantees and standards that children are entitled to in the administration of justice under international human rights law.
- In 2021 UNICEF supported over 70 countries to accelerate progress towards universal birth registration. Key strategies for accelerating progress include advocacy and technical support to eliminate sex discrimination in civil registration laws. CRVS laws in many countries have provisions that put single/unwed mothers at a disadvantage when registering their children's birth. Other key strategies are interoperability with the health sector, simplifying civil registration processes, safe and innovative use of digitization, and demand creation. All this helped countries register about 38 million children and certify over 34 million with UNICEF support in 2021.
- In its most recent General Comment No. 24 on “Children's rights in the child justice system”, the Committee on the Rights of the Child reiterated that the explicit and decisive criterion is the age at the time of the commission of the offence stating that *“if there is no reliable and conclusive proof that the person was not a juvenile, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed”*.

- The growing commitment of states to a moratorium, and the decreasing number of states using the death penalty against children, reflect an overall understanding that applying the death penalty to children is contrary to a **jus cogens of customary international law - a norm from which no derogation is permitted**.
- Nevertheless, the death sentence for offences committed by persons under 18 remains lawful in some countries. In 2021, the executions of four people were reportedly carried out for crimes they were charged of committing when they were below 18 years of age. Moreover, as of the end of 2021, reports suggest that at least 87 juvenile offenders were under sentence of death (Amnesty International Global Report, Death Sentencing and Executions 2021).
- The death penalty also has a profound short and long-term impact on the **human rights of children whose parents are sentenced to the death penalty or executed**. Their mental health and psycho-social wellbeing and economic situation may be affected, and they may experience possible stigma, discrimination, and 'victimization' because of their parents' situation.
- In fact, a whole range of rights and obligations set out in the Convention on the Rights of the Child may be violated such as the best interests of the child (Art.3), the right to be free from violence, including mental violence (Art.19) and the right to special protection and assistance by the State when a child is deprived of a family environment (Art.20) amongst others.
- These children need to be protected and assisted.
- Last year UNICEF launched a new 10-year agenda: **"Reimagine Justice for Children"**.
- Central to this agenda is State accountability for the human rights of children, legal empowerment, non-discrimination, and a call to end the detention of children in all its forms.
- This agenda calls on States to invest in child-friendly and gender-sensitive justice systems; prioritize prevention and early intervention; diversion; non-custodial measures and therapeutic approaches; post-release support; and restorative justice. It recognizes that children in conflict with the law can still be held to account in line with international norms and standards, without sacrificing their sense of dignity and worth.
- All children have the right to access justice and to claim and obtain a remedy for violations of their rights, to enjoy legal safeguards and a fair trial. Respecting the dignity of children and their best interests is central to the full enjoyment of children's rights and capital punishment is contrary to these principles as it undermines human dignity.
- UNICEF calls on States that have not yet abolished the death penalty for all offences committed by persons below the age of 18 years to:
  - Prohibit in law and practice the use of the death penalty for children in line with the Convention on the Rights of the Child and other international human rights standards.

- Put an immediate moratorium on executions of persons convicted of offences committed before the age of 18 and allow individuals sentenced to death to seek pardon or commutation of their sentences (Art.6.4 ICCPR) until the necessary legislative measures abolishing the death penalty for children have been fully enacted.
  - Strengthen child-friendly and gender-sensitive justice systems and promote restorative justice rather than retributive justice systems in line with international human rights standards.
  - Accelerate investments in civil registration systems to ensure that the birth of all children is registered immediately after birth (Article 7 CRC, SDG 16.9) and that children have a birth certificate as proof of their legal identity, including their age, as a critical means of preventing prosecution as an adult and the use of capital punishment for children.
- UNICEF remains fully committed to ending the use of capital punishment for all children and to support efforts promoted by the OHCHR on the question of the death penalty and on the administration of juvenile justice, as well as the GA adoption of a moratorium on the death penalty for all, including children. UNICEF is equally committed to contribute to the ICDP report that will be developed as a follow up to today's meeting.

**Simon Walker, Chief of Rule of Law and Democracy Section, UN Office of the High Commissioner for Human Rights (OHCHR)**

Ambassador, Excellencies, fellow panellists, ladies and gentlemen,

Allow me to begin with a word of thanks to you Ambassador and the ICDP for organizing today's panel on 'Youth and the Death Penalty'.

This is an important subject for the UN - the abolition of the death penalty, particularly against young people, is a matter of priority for the Secretary-General and it is at the heart of the work of OHCHR.

International human rights law categorically prohibits the imposition of the death penalty for crimes committed by persons under 18, at the time of the offence. This is clear from international treaties – but we can say with some confidence that it is also part of customary international law.

In spite of this, not all States follow these universal principles.

Some countries permit death sentences for offences committed by persons under the age of 18. In some situations, the death penalty continues to be imposed on children. And – while only in a very small number of States – the death penalty is still carried out against children.

It is also concerning that people who were under 18 when they committed a crime continue to be on death row, including in some countries that are *de facto* abolitionist. On information available to OHCHR, some children spend more than a decade on death row, often in solitary confinement, causing significant mental suffering, in turn raising questions of torture and ill-treatment.

In response, influential factors in abolition processes across States include political leadership, and an active civil society, including action by religious groups and victims' families to help influence leadership and develop public opinion. International interventions can also be influential in changing attitudes and influencing action.

Indeed, at the international level, the High Commissioner for Human Rights, UN treaty bodies and special procedures of the Human Rights Council conduct quiet diplomacy and public advocacy to halt imminent executions of individual juvenile offenders and promote moratoria and full abolition of the death penalty, especially against child offenders.

Only last month, the UN Working Group on Arbitrary Detention issued an opinion concluding that the death penalty against a young person amounted to arbitrary deprivation of life. The Working Group called on the authorities to release the young person immediately and quash the death penalty against him for crimes he had allegedly committed as a child.

The Working Group also urged authorities to adopt the necessary legislative measures to abolish the imposition of the death penalty for children for all crimes – and requested the authorities to take measures to protect the moral and physical integrity of the 19-year-old young person, considering his age and vulnerability. [Saudi Arabia]

The High Commissioner for Human Rights conducts advocacy with States to halt imminent executions of alleged juvenile offenders and is vocal when such efforts fail. At the same time, the High Commissioner has welcomed positive steps and developments, such as the passing of abolition laws in Papua New Guinea and the Central African Republic and the pledge to abolish the death penalty by the President of Zambia.

It is also worth highlighting that the Global Study on Children Deprived of Liberty concluded that deprivation of liberty constitutes a form of structural violence against children.

Recommendations included the adoption of comprehensive deinstitutionalization policies, the increase of the minimum age of criminal responsibility, the protection of children from violence and other forms of ill-treatment and torture, the establishment of effective child justice systems, and the development of an international database on children's deprivation of liberty.

This last recommendation of the Global Study touches upon one of the key challenges - namely the lack of transparency and access to information.

Up-to-date and accurate global figures on the use of the death penalty, including against juvenile offenders, are difficult to obtain. Some countries continue to classify data on the use of the death penalty as a State secret, and little or no information is available for some countries.

The role of NHRI, CSO, victims' organizations and lawyers is key in this regard, often at a high cost, including risks of reprisals.

OHCHR remains committed to carrying forward the objective of abolition of the death penalty, including through the publication of as much information as possible in reports on the death penalty to the Human Rights Council and to the General Assembly.

We do so in the context of the Secretary-General's 'Common Agenda', where he advocates for delivering more for young people and succeeding generations to be better prepared for the challenges ahead. With this goal in mind, he has committed to more meaningful, diverse and effective youth engagement in decision-making processes. It is in this spirit that we will continue our efforts towards abolition of the death penalty, in particular in relation to youth.

**Laurel Townhead · Representative (Human Rights and Refugees), Quaker United Nations Office (QUNO)**

Thank you to the organisers for inviting me to this sobering and important discussion and thank to all of those who have joined us in person and online.

I take the topic of youth and children and the death penalty from a slightly different angle. Our work has focused on the impacts on children of death sentences and executions of their parents.

This connects well into the discussion today because:

- Some of those under 18 in the criminal justice system, including those facing the death penalty have children of their own – they already are parents.
- And as Marta has spoken about - The impact of the death penalty on youth and children is not limited to when they are facing the death penalty. The death penalty also impacts on children and youth when their parents are sentenced to death or executed.

QUNO has sought to raise this issue as part of work on the death penalty for just over a decade now. And let me first be clear that QUNO is death penalty abolitionist in all circumstances, this work is not about saying yes to the death penalty except for a parent, or even about saying no to the death penalty especially when the convicted person is a parent. It is about saying no to the death penalty and whilst it is still being used let's understand the full impacts on individuals, families, communities and let's not allow this harm to be hidden.

Let me also be clear that we have approached this from a child rights perspective and advocated on this topic primarily to end the harm done to children by sentencing to death or executing their parent. However, there are ways this topic can contribute to the wider work to abolish the death penalty: for example, focusing on the experience of children affected can help humanize those sentenced to death by showing that as people who give and receive love – as human beings and not just the crimes they have been convicted of. It also reminds us that the death penalty does not exist in isolation – it is a State sanctioned violence that continues to be condoned in many communities and has ripples far beyond death row.

Our work has explored what this harm is and what protections are contained in the existing international legal framework.

QUNOs first steps were to gather the people we could find who were working on this topic and working directly with children with a parent sentenced to death or executed. Despite differences in contexts and the individual situation of each child there are patterns in the impact including:



**- Children of parents sentenced to death or executed endure a unique burden resulting from State action.**

Unlike other forms of criminal punishment, the execution of a parent permanently deprives a child of the chance to have a relationship with their parent. The child faces first the threat and then the fact of losing a parent to a violent death carried out by the State. The pain of knowing that their parent is going to be executed can be exacerbated by the indifference or hostility of the public and authorities who do not recognize the trauma this will cause for the child.

Existing research consistently connects a parental death sentence or execution with major psychological and emotional implications for their children.

**- Children of parents sentenced to death or executed are uniquely forced into a conflicted relationship with the State.**

Although sanctioned by national law, executions are nonetheless deliberate, premeditated State killings. They are different from any other parental separation or bereavement a child may suffer.

**- Children of parents sentenced to death or executed can be socially isolated or ostracized.**

They are often stigmatized by association, and this can impact on the care they receive.

**- Children of parents sentenced to death or executed are often left unprotected or do not receive adequate support and care.**

States which sentenced parents to death have a responsibility to ensure that their children are cared for, but often these children receive little or no State assistance.

**- Children face particular challenges with regard to access to their parent on death row.**

Whilst their parent is still alive children have a right to a relationship with them, but security restrictions and procedures may make this difficult or impossible.

**- Children of parents sentenced to death or executed endure particular emotional and psychological distress.**

This can result from both the ever-present threat of the execution or the execution itself.

(These and other impacts are gathered in this report: *Lightening the Load of the Parental Death Sentence on Children* (2013) available in English, French, Spanish, Arabic, Farsi and Japanese.)

Step one in our work was about better understanding these impacts and raising awareness of the issue (including through a Human Rights Council Panel (Sept 2013) mandated through a consensus resolution) – leading to numerous occasions when people said, I just hadn't ever thought about this before.



Step two was about the relevant international law and understanding the impacts mentioned as rights violations, including building the understanding of how a child's rights are engaged when their parent is being sentenced – Kirsten outlined the prohibition on death penalty for those under 18 at time of commission of offence but there is no one clear provision on the rights of a child whose parent is sentenced to death or executed – greater clarity has come through Human Rights Council resolutions, the work of Marta in her role as Special Representative of the UN Secretary General on Violence against Children, the Committee on the Rights of the Child, relevant OHCHR reports<sup>91</sup> and the work of the Human Rights Committee, not least their clarity General Comment 36 on the right to life (Article 6) that:

States ... should also refrain from executing persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as ... parents of very young or dependent children... (para. 49)

These developments are drawn together in an expert legal analysis that we commissioned (Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis (2019). Which concludes:

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. States should instead implement ways to deal with crime without resorting to capital punishment. Alternatives exist for sanctioning crime that do not have the irreversible finality of execution.

Within six months of publishing this paper we were aware of 4 cases in different parts of the world in which the analysis was being used as part the arguments at the sentencing stage. This is something we have not been able to continue to track. But ties in with the last publication we produced on this topic which was aimed at bridging the gap from “this is the first time I have thought about this” to “now I am going to do something about it”. This publication is a set of Briefing Tools for Practitioners (Briefing Tools for Practitioners—Children: unseen victims of the death penalty (2019) available in English and French) with brief information and recommendations for:

- Defence lawyers
- Sentencers
- Legislators
- Media
- Prison Staff
- Teachers
- Death penalty campaigners

What next? This is where I turn the question back to you – how can we build on the work done to date to raise awareness of the harms to children and youth of parental death sentences and executions and use the existing legal framework protecting these people's rights as part of our collective endeavours to end the death penalty in law and practice?

<sup>91</sup> These developments are briefly summarized in this paper: Children of Incarcerated Parents - International Standards and Guidelines (2020) available in English, French, Spanish and Japanese.

I would suggest that further work to take these issues out of these rooms and into court rooms at the national level - by informing and support sentencers, defence lawyers and legislators of the harms and the rights violations these represent could be an effective route – taking people from perhaps never having thought about it, or not knowing how to factor this in to being clear about the impacts and about the role they can play in preventing these human rights violations experienced by children and youth.

**SABRINA BUTLER SMITH, Juvenile death penalty exoneree, USA (online)**

My name is Sabrina Butler Smith. In 1989, I was accused of killing my son in Columbus, Mississippi. At that time, I was only 17 years old and was trying to raise two children by myself.

On that fateful day, my eldest son was at his grandparents' house. It was night. I decided to go for a jog and left my son, who was sleeping at that time, in the house. I jogged to the end of the street and back, knowing roughly what time he would wake up.

When I returned to the house, I went into the kitchen to get a bottle and then went into his room. I immediately noticed that something was wrong, that he was not breathing. I panicked. I grabbed my son, ran outside to the apartment complex where I lived. Despite having lived there for several months, no one really knew me. I started knocking on doors trying to find someone to help me as I did not know what to do. The first person who opened told me she did not have time and closed the door in my face. I continued to knock on doors, screaming for help. Eventually, another person came out and grabbed my son. She performed CPR (cardiopulmonary resuscitation) on him in her apartment. I ran outside again to try and find someone else to help me and eventually found a couple who were willing to take me to the hospital. The woman, who had been performing CPR, told me to hold my son's nose and blow into his mouth, as well as press on his stomach. Later, I would find out that this was the wrong way to perform CPR and that I had been applying adult CPR to my son. Despite my efforts, very tragically, my son did not survive.

When I arrived at the hospital, they took my son from me and initially would not let me be with him. I was deeply concerned and did not know what had happened. But I knew that I was in trouble and feared that I was going to prison as I left my son at home alone. However, I never thought that the authorities would charge me with murder, especially since I was only 17 years old.

Following my fear that I was in trouble and in my panic, I responded without much thought to queries by the staff in the hospital and by detectives at the police station. I was then told to go home.

I could not sleep as I could not wait to find out what had happened to my son and why this was happening to me. So, I returned to the hospital to try to see the autopsy report, not realizing that it takes time.

At the hospital, the detectives were there. They informed me that they wanted to take me to the police station for more questioning. When I arrived at the police station, even before I could sit down, they started screaming and yelling, accusing me of fatally assaulting my child. I had not had any sleep the night before.

The detectives were trying to make me out to be a killer. After four hours of interrogation, the lead detective slammed papers in my face. The detectives were yelling and screaming, like they wanted to fight me. I was scared to death and did not know what to do. When the lead detective told me to sign the papers, I did it because I just wanted it to stop.

After I signed the papers, I was sent to custody. After 23 days, they charged me with capital murder and a child abuse charge. I spent a year in the county jail before my trial. I had two court-appointed attorneys, one of whom was drunk throughout the trial. When I looked at the jury, I saw that they were all-white and feared for their ruling as it appeared that no one liked me. I begged to be allowed to plead and testify in my own defence but was denied that opportunity by my attorneys. The jury came back and found me guilty. I was sentenced to death on 13 March 1990.

I appealed against this decision, went back to court with a new attorney who discovered that my son had heart, kidney, and lung problems that led to his death. His demise had nothing to do with me. I spent two years and nine months on death row before my case was overturned. I was exonerated on 8 December 1995, making me the first woman in the United States to be exonerated from death row.

Today, I have a 19-year-old daughter who has the same disease that my son died from. She is currently fighting it. I currently live in Memphis, Tennessee.

I advocate for wrongful convictions and people wrongfully incarcerated for crimes they did not commit. I work with Witness to Innocence, an organization composed of death row exonerees, and we speak as often as we can to educate the public about wrongful causes of incarceration and the death penalty. It is our hope one day to get rid of the death penalty. That is why I am here as a speaker today and I thank everyone for having me.

Thank you.







International Commission against the Death Penalty

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