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High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to resolution 22/11 of the Human Rights Council. It provides a summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed, held on 11 September 2013, at the twenty-fourth session of the Human Rights Council.



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I. Introduction

1. Pursuant to resolution 22/11, the Human Rights Council held a panel discussion, on 11 September 2013, at its twenty-fourth session, on the human rights of children of parents sentenced to the death penalty or executed, with a particular focus on the ways and means to ensure the full enjoyment of their rights.
2. Based on the request of the Human Rights Council, the panel discussion aimed to:
(a) examine the negative impact of the imposition and carrying out of the death penalty on the human rights of children whose parents are sentenced to the death penalty or executed;
(b) promote better understanding of the international human rights norms and standards relevant to the rights of those children; and (c) discuss the protection and assistance that those children may require in the enjoyment of their human rights.
3. The panel discussion was chaired by the President of the Human Rights Council, Remigiusz Henczel, and moderated by Bertrand de Crombrughe, Permanent Representative of Belgium at the United Nations Office in Geneva. It was opened by the Deputy High Commissioner for Human Rights, Flavia Pansieri. A statement was delivered on behalf of Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children. The panellists were: Jorge Candona Llorens, member of the Committee on the Rights of the Child; Sandra Jones, Associate Professor, Rowan University (United States of America), Nisreen Zerikat, National Centre for Human Rights (Jordan), Francis Ssubi, Executive Director, Wells for Hope (Uganda).
4. The present summary was prepared by the Office of the High Commissioner for Human Rights (OHCHR) pursuant to the request of the Human Rights Council in resolution 22/11 that it prepare a report on the outcome of the panel discussion in the form of a summary, and to present it to the Council at its twenty-fifth session.

II. Statements by the Deputy High Commissioner for Human Rights and the Special Representative of the Secretary-General on Violence against Children

5. In her opening statement, the Deputy High Commissioner for Human Rights stated that developments over recent years in all regions of the world indicated a growing trend towards abolition of the death penalty. Many States had acknowledged that the death penalty undermined human dignity, and that its abolition contributed to the enhancement, progressive development and full enjoyment of human rights by all. The Deputy High Commissioner further noted that several international and regional human rights instruments prohibited the use of capital punishment or encouraged its abolition and/or strictly limited its application. In particular, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, to date ratified by 78 States and signed by 36, provides that no one within the jurisdiction of a State party to the Optional Protocol shall be executed. In States which had not abolished the death penalty, international human rights law required, as a minimum, full compliance with the restrictions prescribed in the Covenant and the Convention on the Rights of the Child. According to article 6 of the Covenant, the use of the death penalty shall be limited to the "most serious crimes". In addition, States must ensure that the guarantees of a fair trial and due process as prescribed in article 14 of the Covenant are strictly complied with. Article 6 of the Covenant, as well as article 37 of the Convention on the Rights of the Child, provide that the death penalty shall not be imposed for offences committed by persons below 18 years of age. Furthermore, article 6 of the Covenant

prohibits the execution of pregnant women. In addition to these limitations, States that used the death penalty also needed to consider how to address the consequences of its use on society at large, in particular on the families of individuals sentenced to death or executed.

6. The Deputy High Commissioner noted that, in its resolution 22/11, the Human Rights Council expressed deep concern regarding the negative impact of the imposition and carrying out of the death penalty on the human rights of children of parents sentenced to death or executed, and urged States to provide those children with the protection and assistance they required. The Deputy High Commissioner further stated that existing research suggested a number of negative short- and long-term effects on children whose parents were sentenced to death or executed, including infringement of the enjoyment of a range of rights and obligations set out in the Convention on the Rights of the Child. These included, in particular: the obligation to ensure that the best interests of the child are duly taken into account and protected (art. 3); the right to be free from violence, in particular mental violence (art. 19); the right to special protection and assistance by the State action when a child was deprived of his or her family environment (art. 20) and the right to a standard of living adequate for a child's physical, mental, spiritual, moral and social development (art. 27, para. 1).

7. The Deputy High Commissioner highlighted research suggesting that the execution of a parent could affect a child's health in a number of ways, including emotional trauma leading to long-term damage to mental health. She also noted that children of parents who were sentenced to death might suffer discrimination, especially where the parent's offence was publicly known, including through media exposure. Evidence also showed that the death penalty disproportionately affected the poor and certain racial, ethnic and religious minorities. Thus, a child could feel discrimination on grounds of race, religion or economic condition, as well as owing to the stigma due to the death sentence faced by their parents. In some cases, convicted inmates were not informed of their forthcoming execution, nor were their families and lawyers, and bodies of the executed inmates were not returned to the families. In that regard, the Deputy High Commissioner highlighted the conclusion of Human Rights Committee that the failure to inform family members of upcoming executions was incompatible with article 7 of the International Covenant on Civil and Political Rights and constituted inhumane or cruel treatment.¹ Such secrecy also violated the right of the child to information regarding sentencing of their parents under article 9, paragraph 4, of the Convention on the Rights of the Child.

8. In her statement, the Special Representative of the Secretary-General on Violence against Children stated that, to date, children of parents sentenced to the death penalty had been invisible in statistics, and in policies and programmes. Referring to studies made by the Quaker United Nations Office and other organizations, she noted that a majority of those children came from disadvantaged families who had been experiencing considerable hardship long before a parent had been sentenced to death or executed. She said that the impact of that cruel and inhuman treatment on family members could not be denied; and, in the case of children, it gained an ever growing dimension. Those children experienced fear and a deep sense of insecurity as they lived under the constant threat that their parent, whom they loved most in the world, could be executed at any moment. The loss of a parent was irreversible but, unlike a natural death, when it resulted from the action of the authorities of a country, it became particularly confusing and frightening for the child. Traumatized, with low self-esteem, feeling ashamed and at times the victim of stigmatization and humiliation, it became very difficult for those children to explain their

¹ Communication No. 887/1999, *Staselovich v. Belarus*, Views adopted on 3 April 2003, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40, vol. II (A/58/40 (Vol. II))*.

situation, and it was increasingly tempting for them to deny it and hide their feelings. The Special Representative further noted that States sentencing a person to death tended to give little or no assistance for the care and protection of that person's children. At the same time, the serious stigma associated with persons sentenced to death often made it difficult to find alternative caregivers, which further exacerbated the trauma endured by the child and heightened risk of homelessness and exposure to violence and to being manipulated into a criminal path. The Special Representative further stated that the sentencing of a parent to the death penalty or execution compromised the enjoyment of a wide spectrum of children's rights. In that regard, she emphasized the critical importance of ensuring that the situation of children of parents facing the death penalty was given urgent attention and action to support them through a protective environment, and through services and recovery and reintegration measures.

III. Contributions of the panel

9. In his introductory remarks, as the moderator of the panel, Bertrand se Crombrughe stated that the negative impact of a parent's execution on his or her children was a matter of concern. Since the execution of a parent was a direct result of a State action, the State in question had a responsibility to ensure that children received appropriate care and assistance. He highlighted that the Human Rights Council had opted for a human rights approach to the issue. In that regard, he noted that its resolution 22/11 referred to provisions of the Convention on the Rights of the Child, which enjoyed almost universal ratification. He also recalled previous relevant resolutions and discussions, in particular Council's resolution 19/37 on the rights of the child and the day of general discussion on children of incarcerated parents convened by the Committee on the Rights of the Child held on 30 September 2011.

10. Jorge Cardona Llorens discussed the international human rights norms and standards legal framework relevant to the rights of children of parents sentenced to death. In that regard, he discussed the application of the concept of "best interests of the child". That concept was aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention on the Rights of the Child and the holistic development of the child. In particular, he noted that article 3, paragraph 1, of the Convention gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere, including in the court of law. The Committee on the Rights of the Child has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child.² He further referred to general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.³ He highlighted that States parties to the Convention were legally obliged to carry out this assessment each time a decision concerning a child was taken; and such determination and assessment had to be singular, relevant and explicit. He emphasized that when the sentence was issued regarding the parent of a child, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. The full application of the concept of the

² The Committee's general comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and No. 12 (2009) on the right of the child to be heard, para. 2.

³ The Committee expects States to interpret development as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development" (general comment No. 5 (2003), para. 12).

child's best interests required the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity. He also noted that the best interests of the child — once assessed and determined — might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts had to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. If harmonization was not possible, authorities and decision-makers would have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration meant that the child's interests had high priority and not just one of several considerations.

11. Sandra Jones of Rowan University discussed the grief and trauma of children of death row inmates in the United States of America. Concurring with previous speakers, she noted that from the time of their parent's arrest to the execution, these children were cast into an agonizing form of grief that was unlike any other. She noted that they felt alone and stigmatized due to all the publicity generated within the highly sensationalized media by their fathers' (or mother's) case. As consequence, those children tended to isolate themselves from their peers and even from the rest of the family. She also noted that those children found it painful and difficult to have a meaningful relationship with their father (or mother), given the numerous obstacles imposed by the prison system, such as the glass that separated them during their visits in prisons' maximum security areas. With regard to difficulties in school, she highlighted that generally no support system was put in place for those children and school often became a place where they fought to defend their parent's reputation and, by extension, their own. As a result of those experiences that came with having a parent on death row, the children typically suffered a variety of medical and psychological conditions such as post-traumatic stress disorder and depression. In addition, they might dissociate in an attempt to keep from feeling their pain, and could demonstrate behavioural problems and were often highly aggressive, as they harboured a great deal of anger. Children often displayed symptoms of trauma, including insomnia and rumination — particularly those children who were witness to the murder committed by their parent.

12. Nisreen Zerikat stated that national human rights institutions could play a pivotal role for the protection of the human rights of children of parents sentenced to death by facilitating their visits to prisons, monitoring human rights violations suffered by those children, receiving complaints from the children themselves or from their relatives and following up the cases of reported human rights violations with the concerned authorities. In that regard, she noted that the National Centre for Human Rights in Jordan offered support to prisoners and extended its services to their families and children. She also highlighted: the importance of the human rights education of law enforcement bodies, which should include training on the rights of the child; the importance of the development of child-sensitive guidelines on prison visits by children of parents on death row and the role of the media in protecting the human rights of those children.

13. By highlighting experiences of his own organization, Francis Ssubi said that it was very traumatizing for children to live in fear of their parent's execution. Concurring with other panellists, he also noted that children with a parent on death row faced a higher risk of mental-health difficulties, such as sadness, psychological confusion, fear, sleeping problems, anxiety, eating disorders, low self-esteem and a sense of powerlessness. In addition, they faced other risks, such as early marriage, school dropout, poor grades, stunted growth, unwanted pregnancies or extreme violence, such as rape. He recommended that research be carried out worldwide to establish the exact number of children affected. Such research could assist States and other stakeholders to effectively help them. He also recommended that States establish child-friendly criminal justice systems and develop sentencing guidelines catering for the best interests of the children of offenders, as required in the Convention on the Rights of the Child. He further recommended that States that still

used the death penalty ensured that children maintained contact with the parent in prison by facilitating visits and developing child-friendly visiting conditions and environment. States should create a system whereby children were protected from risks, defended, fed, clothed, sheltered and given appropriate medical care. He also recommended that States provide advice and support to other parents and caregivers of children with a parent sentenced to death, and support and cooperate with non-governmental, faith-based and civil society organizations. Finally, he highlighted the importance of public awareness and the engagement of schools in providing support to avert the harmful effects of parental imprisonment and execution.

IV. Summary of the discussion

14. During the plenary discussion, the following delegations spoke: Algeria, Angola, Argentina, Australia, Austria, Belgium, Cuba (on behalf of Community of Latin American and Caribbean States), Egypt, the European Union, Ireland, Italy, Montenegro, Morocco, New Zealand, Norway, Pakistan (on behalf of a group of States), Poland, Portugal, the Republic of Moldova, South Africa, Spain, Sweden, Switzerland, Thailand, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland. The following delegations from non-governmental organizations also contributed to the discussion: Penal Reform International, Verein Südwind Entwicklungspolitik, the Friends World Committee for Consultation (Quakers), Defence for Children International, the International Catholic Child Bureau, Amnesty International and SERVAS International.

A. General remarks on the use of the death penalty

15. Some delegations expressed their opposition to the death penalty and firmly supported the universal abolition of the death penalty. They considered the death penalty as an inhumane form of punishment, constituting a serious violation of human rights and human dignity. Some delegations also emphasized that there was no clear evidence regarding the deterrent effect of the death penalty, and that any miscarriage or failure of justice in its application was irreversible and irreparable. Concerns were expressed regarding the application of the death penalty in an arbitrary manner and in secrecy.

16. Several delegations emphasized that States that continued to apply the death penalty must guarantee the protections set out in international instruments, including the International Covenant on Civil and Political Rights, the Convention of the Rights of the Child and safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50). In that regard, some delegations further highlighted that article 6, paragraph 2, of the Covenant requires that States continuing to apply the death penalty can only impose that sentence for the most serious crimes. Some delegations noted that ensuring enjoyment of the human rights of children of persons sentenced to death could be used as a supplementary argument in favour of adopting moratoriums on the use of the death penalty.

17. In the light of the negative effects on children, some delegations also called upon States that had not yet abolished the death penalty to introduce a moratorium on executions, with a view to abolishing them; and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. It was also emphasized that there was a need for alternative humane punishment that corresponded to the best interest of the child as well as public interests.

B. Impact of the use of the death penalty on children of parents sentenced to death or executed

18. Various delegations highlighted the urgent need to examine the effects of capital punishment in its entirety, including the social, economic and psychological impact on children of parents sentenced to the death penalty. Some delegations also noted to the importance of discussing other instances where child rights were affected, including where a parent was detained, imprisoned or held in incommunicado detention or in exile, deported or subject to rendition or extrajudicial killing.

19. Several delegations noted that the families, including children, of persons sentenced to the death penalty were “hidden victims” as they were not legally considered to be victims and there was rarely any support for children and family members. In particular, the children had not committed any crimes, yet they were directly affected by their parent’s involvement with the criminal justice system. Concurring with panellists and other speakers, some delegations noted that, from the point of arrest to decades after the execution or release of a parent accused of a capital crime, children’s mental health and well-being, living situation and relationships with others could be affected, often in a devastating manner. In particular, it was emphasized that children suffered severe repercussions from having parents executed, including on their social and psychological health. The process of grieving required continuous access to health services. Some delegations recommended that States provided support for families to access services, including health and medical services.

20. Some delegations also noted that the stigma surrounding the death penalty, and the fact that a disproportionate number of children of parents sentenced to death came from marginalized backgrounds, could feed the isolation of affected children. It was also noted that there was a need to consider the effect of the death penalty on children’s attitudes to violence. It was a paradox that, while States used the death penalty as a tool to fight crime, they might be creating new offenders.

C. Best interests of the child, care and assistance

21. Some delegations highlighted that the Convention on the Rights of the Child sets out comprehensive guidelines regarding the obligations of the State for the protection of the human rights of all children, including children of parents sentenced to death or executed. They emphasized that States that used the death penalty bore full responsibility for ensuring the protection of the human rights of those children. In particular, States were obliged to take into account the best interests of any children when sentencing parents.

22. Various delegations also emphasized the need to address the impact of the separation of children from their parents, in accordance with article 9, paragraph 4, of the Convention on the Rights of the Child and in line with the report of the day of general discussion on children of incarcerated parents. It was also noted that, in a recent resolution on the right of the child, the Human Rights Council had affirmed, in its resolution 19/37, that the best interests of the child were an important consideration in all matters concerning the child related to sentencing of his or her parents.

23. It was also emphasized that further emotional and material support was needed for families and children of persons executed in order to reduce stigmatization. That support was important to prevent children from becoming offenders. Some delegations requested further information from the panel on the type of assistance and protection that should be made available, in compliance with the Convention on the Rights of the Child, to the children of parents sentenced to death or executed.

24. Some delegations also emphasized that, if a parent was exonerated and released, or their death sentence was commuted to a term of imprisonment, children and their families required support, as they might experience difficulties in adjusting to the new situation.

D. Information and access

25. During the discussion, several delegations underlined the challenges faced by families and children with regard to access to and information on individuals sentenced to the death penalty. It was highlighted that, in some cases, executions were carried out without giving the relatives advance notice of the date and time of execution; and the authorities did not return the remains of the executed to their families. In some instances, despite legal requirements, families were not given an opportunity for a final visit or to receive the body and effects of their relative after executions. In that regard, it was emphasized that the Human Rights Committee,⁴ the Committee against Torture,⁵ the Special Rapporteur on extrajudicial, summary or arbitrary executions⁶ and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had expressed concerns about the lack of transparency surrounding executions.⁷

26. It was emphasized that States must also ensure that family members could visit the person sentenced to death, and that age-appropriate information and assistance should be provided to children to help them understand the situation. Relevant information, including the date and time of the execution and place of burial, should always be made available either to the child or to the supporting carer. Families needed to be given warning of the date of executions, allowed a final visit, and given information regarding the place of burial, so that children and families could complete their grieving process. Various delegations also emphasized that States must ensure the right of family to receive the body of the executed person, especially where the sentence was carried out in another country.

27. Some delegations emphasized that the child's right to physical access to their parents or to access information should be fully respected and protected, as provided in article 9 of the Convention on the Rights of the Child, as well as in Council resolution 19/37; as should the right to have physical contact with parents as long as it did not conflict with the best interests of the child. Some delegations also recommended enhancing possible physical and written communication between parents and their children, and increasing the information available on the status and whereabouts of the parent.

28. Recalling General Assembly resolution 67/176 on moratorium on the use of the death penalty, some delegations called upon States to make available all relevant information on their use of capital punishment.⁸

⁴ See Communication No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, and communication No. 887/1999, *Staselovich v. Belarus*, Views adopted on 3 April 2003, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40, vol. II (A/58/40 (Vol. II))*; see also its concluding observations on Japan, CCPR/C/79/Add.102, para. 21.

⁵ See its concluding observations on Belarus, CAT/C/BLR/CO/4, para. 27; see also its concluding observations on Mongolia, CAT/C/MNG/CO/1, para. 19.

⁶ Report on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, para. 57.

⁷ Interim report, A/67/279, paras. 40 and 52; see also the report on a mission to Uzbekistan, E/CN.4/2003/68/Add.2, para. 65.

⁸ Paragraph 4 (b) of that resolution called upon States "to make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to

E. Children of parents facing the death penalty in foreign States

29. Various delegations stated some of their citizens were facing the death penalty in other countries. Children who were in the same country as the sentenced parents might need help to be repatriated to the country of origin, or stay near the parent, depending on various factors, such as the child's age and the availability of suitable carers. In that regard, some delegations also urged States to fully respect the provision of consular assistance to foreign nationals who were sentenced abroad.

V. Concluding remarks and recommendations

30. In their concluding remarks, the panelists emphasized that the best option would be abolishing the death penalty; however, where that was not yet the case, it was important to develop measures to minimize the harm suffered by the children of parents sentenced to death or executed. Some 193 States had ratified the Convention on the Rights of the Child, which sets out the best interests of the child as the primary consideration. All States, by adopting the necessary measures, must ensure that children's rights were taken into consideration during sentencing. The panellists also concurred with various delegations that there was a need for treaty bodies and the Human Rights Council to think more about how the best interest of the child could be evaluated in accordance with the provision of the Convention on the Rights of the Child. Furthermore, the panellists also emphasized that it was necessary to provide support and advice to the remaining parent, caregivers and civil society groups, and there was also a need to involve schools in the issue, as schools were suitable institutions at which children could get significant support.

31. The following recommendations were made for further action by the Human Rights Council and other United Nations human rights entities, including the relevant treaty bodies:

(a) Convene an expert seminar, with United Nations experts and practitioners, in order to investigate the issue further, including a full examination of the applicable human rights framework, to enable all relevant international human rights treaty bodies and special procedures to engage with the issues, as well as to provide guidance to States and other bodies;

(b) Develop further guidance regarding the form of assistance referred to in articles 9 and 20 of the Convention on the Rights of the Child, in particular by the Committee on the Rights of the Child drafting a general comment to elaborate on the issue;

(c) Provide due attention to protection of all children from all forms of violence in the context of the current development of the post-2015 agenda, as this could contribute to social progress and the realization of the Millennium Development Goals;

(d) Conduct further research both to understand the scale of the problem for those affected and the issues that individual children of parents sentenced to death experience; and what States, national human rights institutions, civil society organizations and other stakeholders can do to address challenges in the full

possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty”.

enjoyment of the human rights of children whose parents are sentenced to the death penalty or executed;

(e) Call on on States that still maintain the death penalty to ensure that the rights of the child to information and last visits or communications, as recognized in Human Rights Council resolution 19/37 on the rights of the child, are effectively protected; return the body of a person executed and any personal effects to the family for burial, without payment by the family, or inform them where the body is buried and allow them reasonable access to that location; immediately end any form of secrecy surrounding the use of the death penalty, and ensure domestic legislation complies with international standards on transparency.
