



**The Compliance of Kuwait with the Convention on the Rights of the Child
Alternative Report about the Rights of Children Whose Parents are Sentenced to Death or
Executed**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

**for the 91st Session of the Committee on the Rights of the Child
Pre-Sessional Working Group
29 August – 23 September 2022**

Submitted 15 August 2022

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. In 2007, Kuwait began a de facto moratorium on the use of the death penalty.¹ The government did not take steps to formalize the moratorium in law, and executions resumed in 2013² and again in 2017.³ In 2018, authorities in Kuwait sentenced 34 individuals to death, a significant increase from 15 death sentences in 2017.⁴
2. The death penalty is available in Kuwait for some crimes, such as drug-related offenses, that do not involve intentional killing and therefore do not constitute the “most serious crimes” under Article 6 of the International Covenant on Civil and Political Rights.⁵ The Government voted against UN General Assembly resolution 73/175, a resolution on a moratorium on the death penalty.⁶
3. In continuing to use the death penalty, Kuwait continues to violate the rights of children whose parents have been sentenced to death. The government of Kuwait fails to consider the best interests of the child in sentencing parents to death and subjects children to physical and mental distress during the sentencing and execution of their parents.

Kuwait fails to uphold its obligations under the Convention on the Rights of the Child

I. Primary consideration of the interests of the child in rules of procedure and judicial decisions (List of Issues para. 5)

4. In its 2020 List of Issues, the Committee requested information on “how the best interests of the child are incorporated into legislation as a substantive right, a fundamental, interpretative legal principle, and a rule of procedure.”⁷
5. In its Replies to the List of Issues, the government of Kuwait sought to demonstrate its consideration for children by citing Article 59 of the Penal Code, which provides that if a woman sentenced to death is pregnant and delivers a live newborn, the death sentence is commuted to a life sentence. Kuwait further referenced Article 218 of the Penal Procedures Code, which has a similar provision.⁸

¹ Human Rights Watch, Kuwait: First Executions in 4 Years (Jan. 26, 2017),

<https://www.hrw.org/news/2017/01/26/kuwait-first-executions-4-years>.

² Amnesty International, Kuwait: Deplorable Resumption of Executions (Apr. 1, 2013),

<https://www.amnesty.org/en/press-releases/2013/04/kuwait-deplorable-resumption-executions/>.

³ Human Rights Watch, Kuwait: First Executions in 4 Years (Jan. 26, 2017),

<https://www.hrw.org/news/2017/01/26/kuwait-first-executions-4-years>.

⁴ Amnesty International, Death Sentences and Executions 2018 (2019),

<https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF> at 5.

⁵ Amnesty International, Death Sentences and Executions 2018 (2019),

<https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF> at 12.

⁶ Amnesty International, Death Sentences and Executions 2018 (2019),

<https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF> at 53.

⁷ United Nations Committee on the Rights of the Child, *List of issues in relation to the combined third to sixth periodic reports of Kuwait* (November 17, 2020). U.N. Doc. CRC/C/KWT/Q/3-6, ¶ 5 (a).

⁸ United Nations Committee on the Rights of the Child, *Replies of Kuwait to the list of issues in relation to its combined third to sixth reports* (January 12, 2022). U.N. Doc., CRC/C/KWT/RQ/3-6, ¶ 38.

6. Kuwait ratified the Convention on the Rights of the Child in 1991.⁹ Kuwait continues to sentence people to death, even though doing so violates the rights of those people's children. Death sentences and executions of a parent can violate a child's rights to not be separated from a parent, to have his or her best interests taken as a primary consideration, to health, safety, and an adequate standard of living, and to freedom from torture.
7. While Article 59 of the Penal Code and Article 218 of the Penal Procedures Code appear to allow for the commutation of a death sentence to a woman who gives birth, the articles do not consider commutation of a sentence for a father with a newborn or a parent of any gender who has preexisting children.¹⁰
8. Current law allows incarcerated mothers to raise a child born in prison for the first two years after birth.¹¹ The law appears silent as to the rights to cohabitation for incarcerated fathers, regardless of the age of the child, or for mothers with children older than two years. Further, while visitation is reportedly available to the children of incarcerated mothers until the child reaches 12 years of age, it is unclear if the same rights are available to incarcerated fathers, to parents of any gender who are sentenced to death, or to parents of any gender whose children are above the age of 12.¹²
9. Children have a right to remain with their parents, unless separation is in the child's best interests.¹³ When a parent is sentenced to death and imprisoned, the child has a right to direct contact with the parent to maintain the relationship. Prohibition of visits by the child to the incarcerated parent must only occur after careful consideration of the best interests of the child.¹⁴

II. Mental and physical health of children whose parents have been sentenced to death (List of issues para. 8).

10. In its 2020 List of Issues, the Committee requested information regarding alternative forms of care provided to children deprived of a family environment.¹⁵
11. In its Replies to the List of Issues the government of Kuwait stated that the Family Care Act No. 80 of 2015 created the Family Care Committee "which expresses its views on ...

⁹ United Nations Office of the High Commissioner for Human Rights, UN Treaty Body Database: Reporting status for Kuwait,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=KWT&Lang=EN.

¹⁰ United Nations Committee on the Rights of the Child, *Replies of Kuwait to the list of issues in relation to its combined third to sixth reports* (January 12, 2022). U.N. Doc., CRC/C/KWT/RQ/3-6, ¶ 38.

¹¹ United Nations Committee on the Rights of the Child, *Second Periodic Reports of States Parties Due in 1998, Kuwait* (May 12, 2012), U.N. Doc CRC/C/KWT/2, ¶ 115.

¹² United Nations Committee on the Rights of the Child, *Second Periodic Reports of States Parties Due in 1998, Kuwait* (May 12, 2012), U.N. Doc CRC/C/KWT/2, ¶ 115.

¹³ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farior (Feb. 2019), 5.

¹⁴ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farior (Feb. 2019), 25.

¹⁵ United Nations Committee on the Rights of the Child, *List of issues in relation to the combined third to sixth periodic reports of Kuwait* (November 17, 2020). U.N. Doc. CRC/C/KWT/Q/3-6, ¶ 8 (c) and (d).

conditions inside social cares institutions.”¹⁶ In addition, Kuwait mentioned “the Ministry of Social Affairs [that] is responsible for the comprehensive care and upbringing of children, including social, psychological, educational, religious and health-related aspects as well as leisure activities and is attentive to the children’s human dignity.”¹⁷

12. A parent’s death sentence is likely to have a negative influence on a child’s mental and physical health.¹⁸ A child of a parent sentenced to death may experience trauma resulting from separation from the parent, social stigma based on the parent’s status, and uncertainty and fear relating to the parent’s execution.¹⁹ A direct connection exists between a parent’s death sentence and psychological effects on the child, expressed through, *inter alia*, anger, low self-esteem, poor participation in school, loss of sleep, and loss of appetite.²⁰
13. The potential effects on a child are not merely psychological. Families with a parent sentenced to death confront reduced income, resulting in a lower standard of living and introducing new obstacles for education and health care access.²¹ Children of parents sentenced to death often come from disadvantaged or poor backgrounds; the loss of income and stability resulting from a parent’s death sentence can aggravate already challenging circumstances.²²
14. The Government of Kuwait has not offered evidence that the judiciary considers a child’s health at the time of sentencing.
15. The severe psychological trauma experienced by a child when a parent is sentenced to death or executed may constitute ill-treatment and rise to the level of torture.²³ Children of

¹⁶ United Nations Committee on the Rights of the Child, *Replies of Kuwait to the list of issues in relation to its combined third to sixth reports* (January 12, 2022). U.N. Doc., CRC/C/KWT/RQ/3-6, ¶ 70 - 72.

¹⁷ United Nations Committee on the Rights of the Child, *Replies of Kuwait to the list of issues in relation to its combined third to sixth reports* (January 12, 2022). U.N. Doc., CRC/C/KWT/RQ/3-6, ¶ 70 - 72.

¹⁸ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 15.

¹⁹ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 16.

²⁰ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 15.

²¹ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 15.

²² Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 15.

²³ Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Farrior (Feb. 2019), 16.

parents sentenced to death in Kuwait may experience torture through the uncertainty about their parent's death and the availability of post-execution photographs.

16. It is not known whether courts and prison officials provide children with adequate information relevant to a parent's sentence and upcoming execution. The trauma associated with not knowing such information can constitute ill-treatment or torture for a child.²⁴
17. The Government of Kuwait carries out at least some executions by hanging and has permitted media to publicize photographs and other depictions of the completed executions.²⁵

III. Suggested recommendations for the Government of Kuwait

- Adopt an official, *de jure* moratorium on the death penalty with a view to its complete abolition and commute the sentences of all persons currently sentenced to death to a sentence that is consistent with international human rights standards.
- Ensure that all judicial authorities take into account, at the time of sentencing, the best interests of any child (of any age) of the parent being sentenced, particularly with respect to whether sentencing the parent to death will be in the best interests of the child.
- Ensure that an independent authority assesses whether allowing a child to visit a parent sentenced to death would be in the best interests of the child, taking into account the child's own views whenever possible, and direct prison authorities to fully carry out the determination of the independent authority.
- If an independent authority determines that allowing a child to visit a parent sentenced to death would be in the best interests of the child, ensure that prison authorities facilitate such visits as frequently as would be consistent with the best interests of the child and ensure that the visits happen under minimally restrictive conditions.
- Ensure that an independent authority assesses whether allowing a child to communicate with a parent sentenced to death would be in the best interests of the child, taking into account the child's own views whenever possible, and direct prison authorities to fully carry out the determination of the independent authority.
- If an independent authority determines that allowing a child to communicate with a parent sentenced to death would be in the best interests of the child, ensure that prison authorities facilitate such communication as frequently as would be consistent with the best interests of the child and ensure that the communication happens under minimally restrictive conditions.

²⁴ Children Rights Connect and Working Group on Children of Incarcerated Parents, *Children of parents sentenced to death or executed: How are they affected? How can they be supported?* (Aug. 2013), 3, 8.

²⁵Capital Punishment UK. Capital punishment in Kuwait 1964 to 2017, available online at <http://www.capitalpunishmentuk.org/kuwait.html#:~:text=The%20Kuwaiti%20judicial%20system%20is,April%201964%20and%20January%202017>.

- Ensure that courts consider how a sentence may affect the mental and physical health of any children of parents being sentenced, particularly when the court evaluates a potential death sentence.
- Ensure that all children of parents sentenced to death receive on-going, high-quality care for their psychological and physical health.
- Ensure that any health providers available to children of parents sentenced to death have adequate training in providing care to such children.
- Train educators working with children of parents sentenced to death to recognize symptoms of trauma and prevent expressions of discrimination or stigmatization directed at such children.
- Provide caregivers for children of parents sentenced to death with adequate financial support to ensure that children do not face a diminished standard of living as a result of the parent's death sentence and incarceration.
- Ensure consistent pre-execution information-sharing practices so that children and families of persons sentenced to death are aware of the date, time, and location of the planned execution and status of any appeals.
- Prohibit the use of cameras, cell phones, or other recording devices by individuals who witness an execution or its aftermath to prevent publication of images of executions.