**Response to the OHCHR Call for Inputs about the Death Penalty**

**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**

in preparation for

**The 2020 supplement to the Secretary-General’s quinquennial report on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty**

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**The Advocates for Human** **Rights** (The Advocates) is a volunteer-based nongovernmental 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** (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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. The authors submit this report in response to an OHCHR request to assist the Secretary-General in his report to the Human Rights Council pursuant to Paragraph 5 of Resolution 22/11[[1]](#footnote-1) and Resolution 18/117.[[2]](#footnote-2)

# **Several States continue to sentence people to death for crimes committed as juveniles.**

1. **Iran**
2. Over the last two years, Iran appears to have increased its use of the death penalty for juvenile offenders.[[3]](#footnote-3) Under Iran’s Islamic Penal Code, males older than 15 years old and females older than 8 years old convicted of murder may be sentenced to death in the same manner as adults.[[4]](#footnote-4) In 2018 and 2019, Iran executed at least ten individuals under the age of 18 at the time of the offense;[[5]](#footnote-5) in three cases the offender was just 15 years old at the time of the offense.[[6]](#footnote-6) Iran tends to schedule executions of juvenile offenders on short notice, reducing people’s ability to intervene or protest.[[7]](#footnote-7)
3. **South Sudan**
4. South Sudan’s 2011 Transitional Constitution prohibits imposition of the death penalty on people under the age of 18.[[8]](#footnote-8) Notwithstanding, between May and October 2018, South Sudanese authorities apparently executed at least one individual who was under the age of 18 at the time of the offense.[[9]](#footnote-9) As recently as September 30, 2019, South Sudanese authorities reportedly executed another individual for a juvenile offense.[[10]](#footnote-10)
5. **Saudi Arabia**
6. The August 2018 Law on Juveniles sets the maximum prison sentence for people under the age of 18 at ten years; however, the law does not eliminate the possibility of death sentences for juveniles charged with crimes punishable by retaliation under Shari’a law (such as murder and infliction of bodily injury).[[11]](#footnote-11) On April 23, 2019, Saudi authorities conducted a mass execution of 37 persons, including at least three individuals who had been under the age of 18 at the time of their offenses.[[12]](#footnote-12) It is further believed that other individuals who were juveniles at the time of the offense remain on death row in Saudi Arabia.[[13]](#footnote-13)
7. **Egypt**
8. Egyptian law prohibits the death penalty for any person under the age of 18.[[14]](#footnote-14) Nonetheless, a loophole in Egyptian law states that when a child is accused of a crime with an adult co-defendant, courts that are not juvenile courts have jurisdiction over the matter, leading juveniles to be tried as adults alongside their co-defendants.[[15]](#footnote-15) Since 2013, at least 31 juveniles have been tried in adult courts on death-eligible charges, at least eight people have been sentenced to death for offenses committed as juveniles,[[16]](#footnote-16) and “Egyptian courts have repeatedly sentenced juveniles to death and tried them on death-eligible charges alongside adult co-defendants in mass trials.”[[17]](#footnote-17) At least one individual sentenced to death for a crime committed prior to the age of 18 currently remains under a sentence of death in Egypt.[[18]](#footnote-18)
9. **Maldives**
10. At the beginning of 2018, there were 20 people on death row in the Maldives, including at least five who had been convicted and sentenced to death for crimes committed as juveniles.[[19]](#footnote-19)
11. **Mauritania**
12. There is a legal vacuum in the Mauritanian legislation for children over 16 and under 18. Articles 60 to 63 of the Criminal Code of 1983 do refer to juveniles, but only to those under 16. In December 2018, an investigator of the fact-finding mission conducted by ECPM met with a woman detained in Nouakchott prison who had been sentenced to death for a crime committeed as a juvenile.[[20]](#footnote-20)

# **States prohibit imposing the death penalty on pregnant women at the time of the offense**

1. The authors have been unable to identify any countries that have executed pregnant women since 2018. In most cases, domestic law expressly prohibits such executions.[[21]](#footnote-21)
2. In addition to this prohibition on pregnant women, a new body of jurisprudence is emerging regarding the death penalty applied to women in general including on “the discriminatory application of the death penalty to women”.[[22]](#footnote-22) ”Gender-related forms of persecution […] may include […] the imposition of the death penalty or other physical punishments existing in discriminatory justice system”.[[23]](#footnote-23)
3. Recent research has shown that “women face intersecting forms of discrimination based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, all of which have an adverse impact on the ability of women to gain access to justice on an equal basis with men. Youth, forced and/or child marriage, mental illness or intellectual disability, migrant worker status, poverty, and race and ethnicity are all factors that increase the risk that a woman will be sentenced to death. Many women on death row fall into several of these categories, compounding their vulnerability.[[24]](#footnote-24)

# **States continue to impose the death penalty on people with psychosocial and intellectual disabilities.**

1. **United States**
2. In the United States, the death penalty cannot be imposed on individuals who have limited ability to defend themselves or lack a rational understanding of why they are being executed.[[25]](#footnote-25) Nonetheless, in December 2019, a Tennessee court ordered the executions of two persons on death row despite arguments that the they have psychosocial and intellectual disabilities and have been unable to assist attorneys with their defense.[[26]](#footnote-26)
3. **Iran**
4. The Iranian Government continues to execute individuals with psychosocial disabilities despite Article 149 of the Islamic Penal Code which prohibits criminal responsibility for a person regarded as “insane” at the time of committing of the offense.[[27]](#footnote-27) Conversely, Iranian judges are permitted to ignore a defendant’s psychosocial disability when adjudicating guilt, regardless of the availability of expert opinions.[[28]](#footnote-28) In April 2019, Iran ignored a person’s psychosocial disabilities when it executed a 15-year-old with documented psychosocial disabilities who had attended a school for special needs students.[[29]](#footnote-29) Furthermore, 3 of the 15 women executed in Iran in 2019 were suffering from mental illness.[[30]](#footnote-30)
5. **Republic of Trinidad and Tobago**
6. In March 2019, the Judicial Committee of the Privy Council affirmed the decision of a court in Trinidad and Tobago to sentence to death a person who had documented psychosocial disabilities.[[31]](#footnote-31) The person had sought to commute his death sentence on the basis of new medical evidence that showed he had a personality disorder and likely committed the crime while in a psychotic state with diminished mental responsibility for the crime.[[32]](#footnote-32) The Privy Council rejected the appeal, noting that he had not raised these concerns during the two trials that resulted in the murder conviction.[[33]](#footnote-33)

# **States fail to uphold obligations under the Convention on the Rights of the Child**

1. World Day against the Death Penalty on 10 October 2019 was dedicated to the rights of the Child whose parents have been sentenced to death or executed.[[34]](#footnote-34)
2. In this context, a 2019 Quaker United Nations Office report demonstrates that a State Party to the Convention on the Rights of the Child may violate the Convention when it sentences to death or executes a child’s parent.[[35]](#footnote-35)
3. **Sentencing a parent to death violates a child’s right to health and safety.**
4. When a child abruptly loses a parent as a result of the death penalty, the child is subjected to severe emotional trauma.[[36]](#footnote-36) Research shows the direct connection between a parent’s death sentence and the child’s psychological reactions, including low self-esteem, anger, lack of attention in school, loss of sleep, loss of appetite, and other physiological manifestations.[[37]](#footnote-37) For example, the mother of a child whose father is on deathrow in Indonesia testified that her son lost concentration at school, had no desire to do homework and hardly went out.[[38]](#footnote-38)
5. Despite these consequences, few States consider the child’s health at the time of sentencing or provide adequate health services to children of parents sentenced to death.
6. The potential effects on a child are not merely psychological. Children of parents sentenced to death may face a reduction in family income, diminishing the child’s standard of living as well as access to education and healthcare.[[39]](#footnote-39) Parents sentenced to death disproportionately come from poor or disadvantaged backgrounds, and this loss of income can aggravate the child’s economic circumstances.[[40]](#footnote-40) For example, many children in Vietnam become homeless after one or more of their parents are sentenced to death.[[41]](#footnote-41)
7. **Sentencing a parent to death may violate a child’s right to freedom from torture and other ill-treatment.**
8. The severe emotional distress that a child may face when a parent is sentenced to death or executed may be recognized as a violation of Article 37, the child’s right to freedom from torture.[[42]](#footnote-42) For example, in the Republic of Korea, the children of people currently under a sentence of death face the added trauma caused by the uncertainty of knowing that executions could resume any time.[[43]](#footnote-43)
9. **Lack of transparency in judicial and penal proceedings violates the rights of children to information.**
10. Courts and prison officials often fail to inform children of information relevant to a parent’s upcoming execution. For example, Afghan courts and prisons do not have a standardized procedure to notify children of a parent’s execution. The resulting trauma can constitute ill-treatment or torture.[[44]](#footnote-44)
11. There have been multiple reports that authorities in Vietnam have in recent years committed arbitrary or unlawful killings of political opponents.[[45]](#footnote-45) In some cases, the Government of Vietnam has informed the families of the deceased that the cause of death was suicide, and at least one family has reported police harassment, urging them to accept the government’s official version of events.[[46]](#footnote-46) Such practices violate the rights of the victims’ children to information.
12. **Children of parents sentenced to death or executed are at risk of discrimination based on the parent’s alleged political affiliation.**
13. Children of parents who are sentenced to death or executed often face discrimination and stigma as a result of the parent’s conviction and sentencing. This discrimination can lead to additional emotional trauma and can threaten the child’s physical health as a result of violence from the community.[[47]](#footnote-47) For example, the Afghan Government is increasingly relying on the death penalty to demonstrate that it is taking strong measures to crack down on terrorist activities. Since 2001, a majority of people sentenced to death in Afghanistan have been convicted of terrorism-related offenses, and their children face particular stigma and discrimination because of the nature of these offenses.[[48]](#footnote-48) It is unclear whether the Afghan Government takes precautions to reduce the risk of discrimination against these children.
1. UN Human Rights Council Resolution 21/11, ¶ 5, U.N. Doc. A/HRC/Res/21/11 (Apr. 10, 2013). [↑](#footnote-ref-1)
2. UN Human Rights Council Resolution 18/117, U.N. Doc. A/HRC/Res/18/117 (Oct. 17, 2011). [↑](#footnote-ref-2)
3. Amnesty International, *Death Sentences and Executions 2018*, April 2019, available at https://www.amnesty.org/en/documents/act50/9870/2019/en/. [↑](#footnote-ref-3)
4. Amnesty International, *Iran: Teenager’s execution exposes complicity of courts, parliament and doctors in assault on children’s rights*, June 29, 2018, available at https://www.amnesty.org/en/documents/MDE13/8696/2018/en/. [↑](#footnote-ref-4)
5. ECPM and IHR, *2018 and 2019* *Annual Report on the death penalty in Iran*, available at: <https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf> [↑](#footnote-ref-5)
6. Amnesty International, *Executions of Juveniles Since 1990 as of November 2019*, November 2019, available at https://www.amnesty.org/en/documents/act50/0233/2019/en/. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. The Transitional Constitution of the Republic of South Sudan, in force as of July 9, 2011, establishes the current system of government and the supreme law of South Sudan. Paragraph 21 of the Bill of Rights within the Transitional Constitution provides that “no death penalty shall be imposed on a person under the age of eighteen.” [↑](#footnote-ref-8)
9. Amnesty International, *Death Sentences and Executions 2018*, April 2019, available at https://www.amnesty.org/en/documents/act50/9870/2019/en/; Amnesty International, “I told the Judge I was 15”; the use of the Death Penalty in South Sudan (December 2018), p. 7, available at https://www.amnesty.org/download/Documents/AFR6594962018ENGLISH.PDF. [↑](#footnote-ref-9)
10. Amnesty International, *Executions of Juveniles Since 1990 as of November 2019*, November 2019, available at https://www.amnesty.org/en/documents/act50/0233/2019/en/. [↑](#footnote-ref-10)
11. Amnesty International, *Death Sentences and Executions 2018*, April 2019, available at https://www.amnesty.org/en/documents/act50/9870/2019/en/. [↑](#footnote-ref-11)
12. Amnesty International, Saudi Arabia executes 37 people in a single day – including three juveniles, April 23, 2019, available at https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-37-put-to-death-in-shocking-execution-spree/; Human Rights Watch, UN rights chief ‘strongly’ condemns ‘shocking’ mass executions in Saudi Arabia, UN News, April 24, 2019, available at https://news.un.org/en/story/2019/04/1037191. [↑](#footnote-ref-12)
13. Amnesty International, *Death Sentences and Executions 2018*, April 2019, available at https://www.amnesty.org/en/documents/act50/9870/2019/en/. [↑](#footnote-ref-13)
14. FIDH, The Death Penalty in Egypt (April 2005), art. 12, available at https://www.fidh.org/IMG/pdf/eg415a.pdf (citing Article 112 of the Law No. 12 of 1996 promulgating the Children’s Code); Reprieve, Stolen Youth: Juveniles, mass trials and the death penalty in Egypt (Mar. 2018), at 15, available at https://reprieve.org.uk/wp-content/uploads/2018/03/Stolen-Youth-Juveniles-mass-trials-and-the-death-penalty-in-Egypt-.pdf (citing Article 11 of Egypt’s Child Law). See also Mohamed, Gaber, “Reforming the Death Penalty in Egypt: An Islamic Law Perspective” (Dec. 2017), 28 (Master of Laws Thesis, Indiana University Maurer School of Law), available at https://www.repository.law.indiana.edu/etd/52/. [↑](#footnote-ref-14)
15. The National Council for Childhood and Motherhood, Promulgating the Child Law, Article 122, Law No. 12 of 1996 amended by Law No. 126 of 2008, available at https://www.unodc.org/res/cld/document/egy/2002/ egypt\_child\_act\_english\_html/Egypt\_Child\_Act\_ English.pdf. [↑](#footnote-ref-15)
16. Reprieve, Stolen Youth: Juveniles, mass trials and the death penalty in Egypt (Mar. 2018), p. 8, available at https://reprieve.org.uk/wp-content/uploads/2018/03/Stolen-Youth-Juveniles-mass-trials-and-the-death-penalty-in-Egypt-.pdf. [↑](#footnote-ref-16)
17. Ibid at 6. [↑](#footnote-ref-17)
18. Reprieve and the Daftar Ahwal Data Research Center, Mass Injustice: Statistical findings on the Death Penalty in Egypt (May 27, 2019), p. 25, available at http://www.worldcoalition.org/resourcecentre/document/id/1559572545. [↑](#footnote-ref-18)
19. Death Penalty to Resume in the Maldives, January 12, 2018, Amnesty International UK, https://www.amnesty.org.uk/death-penalty-resume-maldives [↑](#footnote-ref-19)
20. Nordine Drici, *Le bagne au pays des sables. Peine de mort, conditions de détention et de traitement des condamnés à mort en Mauritanie*, ECPM, 2019 [↑](#footnote-ref-20)
21. Cornell Center on the Death Penalty Worldwide and World Coalition Against the Death Penalty, “Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty”, p.7, September 2018, available at <https://www.deathpenaltyworldwide.org/publication/judged-more-than-her-crime> [↑](#footnote-ref-21)
22. CEDAW, General Recommendation No. 35, para 29 c) i), 2017 [↑](#footnote-ref-22)
23. CEDAW, General Recommendation No. 32, para 15, 2014 [↑](#footnote-ref-23)
24. Cornell Center on the Death Penalty Worldwide and World Coalition Against the Death Penalty, “Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty”, p.15, September 2018 [↑](#footnote-ref-24)
25. Death Penalty Information Center, “*Description of Mental Illness*”, retained on March 24, 2020, available at https://deathpenaltyinfo.org/policy-issues/mental-illness/description-of-mental-illness: [↑](#footnote-ref-25)
26. Death Penalty Information Center, “*Tennessee Sets Execution Dates for Two Men With Issues of Innocence, Intellectual Disability, and Competency*”, February 26, 2020, available at https://deathpenaltyinfo.org/news/tennessee-sets-execution-dates-for-two-men-with-issues-of-innocence-intellectual-disability-and-competency. [↑](#footnote-ref-26)
27. The Advocates For Human Rights, “*Iran’s Compliance with the Convention on the Rights of Persons with Disabilities: The Death*” Penalty, p. 17, available at https://www.theadvocatesforhumanrights.org/uploads/iran\_crpd\_death\_penalty\_report\_february\_2017\_final\_updated\_9\_march\_2017.pdf. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. Radio Farda Iran News, “*Iran Executed 110 In Six Months, Including Minors*”, July 5, 2019, available at https://en.radiofarda.com/a/iran-executed-110-in-six-months-including-minors/30037607.html. [↑](#footnote-ref-29)
30. ECPM & IHR, 2019 Annual Report on the death penalty in Iran, p.51, available at: http://www.ecpm.org/wp-content/uploads/Report-on-the-death-penalty-in-Iran-2019.pdf [↑](#footnote-ref-30)
31. Amnesty International Global Report, “*Death Sentences and Executions 2018*”, p.17, April 2019, available at https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF. [↑](#footnote-ref-31)
32. Ibid citing *Chandler v. The State* (Trinidad and Tobago) (UKPC 5), Judicial Committee of the Privy Council (2018). [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. [www.worldcoalition.org/worldday](http://www.worldcoalition.org/worldday) [↑](#footnote-ref-34)
35. 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 (New York, US: Quaker United Nations Office, Feb. 2019), at 5. [↑](#footnote-ref-35)
36. Quaker United Nations Office (QUNO), *Children of Parents Sentenced to Death*, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 12. [↑](#footnote-ref-36)
37. 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. [↑](#footnote-ref-37)
38. Carole Berrih, ECPM and Kontras, *Dehumanized : The prison conditions of people sentenced to death in Indonesia*, p.79, 2019 [↑](#footnote-ref-38)
39. Ibid. [↑](#footnote-ref-39)
40. 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 (New York, US: Quaker United Nations Office, Feb. 2019), 15. [↑](#footnote-ref-40)
41. U.N. Special Representative of the Secret’y-Gen. on Violence Against Children, The rights of the child when a parent is sentenced to the death penalty or executed (Oct. 10, 2017). [↑](#footnote-ref-41)
42. 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 (New York, US: Quaker United Nations Office, Feb. 2019), 16. [↑](#footnote-ref-42)
43. Ibid. [↑](#footnote-ref-43)
44. 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?* (August 2013), at 3, 8. [↑](#footnote-ref-44)
45. Vietnam 2018 Human Rights Report, United States Dep’t of State, Bureau of Democracy, Human Rights and Labor at 1 (2018). [↑](#footnote-ref-45)
46. Ibid. [↑](#footnote-ref-46)
47. Quaker United Nations Office (QUNO), Children of Parents Sentenced to Death, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 10. [↑](#footnote-ref-47)
48. Law Explorer, “Afghanistan: Death Penalty at the Crossroads,” June 25, 2019, https://lawexplores.com/afghanistan-death-penalty-at-the-crossroads/; Afghanistan Analyst Network, “Afghanistan’s Latest Executions: Responding to calls for capital punishment,” June 25, 2019, https://www.afghanistananalysts.org/afghanistans-latest-executions-responding-to-calls-for-capital-punishment/. [↑](#footnote-ref-48)