



## **Afghanistan's Compliance with the Convention on the Rights of the Child**

### **Suggested List of Issues Relating to 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**

**84th Session of the Committee on the Rights of the Child (Pre-Sessional Working Group)  
30 September 2019–4 October 2019**

**Submitted 1 July 2019**

**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** (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. This report highlights issues regarding the rights of children of incarcerated and executed parents in Afghanistan. The report also offers suggested questions for the Committee on the Rights of the Child to pose to the Government of Afghanistan regarding these issues.

### Background on the Death Penalty in Afghanistan

2. After the period of Taliban control of Afghanistan from 1992 to 2001<sup>1</sup> during which capital punishment was widespread, the Afghan Government dramatically scaled back its use of the death penalty.<sup>2</sup> Nonetheless, former president, Hamid Karzai, and current president Ashraf Ghani have approved multiple executions during their tenures.<sup>3</sup>
3. Although the international community continues to urge the Afghan Government to impose a moratorium on executions, some civil society actors express support for capital punishment as a means to express opposition to the Taliban.<sup>4</sup> Afghan courts fail to comply with fair trial standards, are considered corrupt, and lack independence from the executive branch.<sup>5</sup>
4. According to available information, the most recent executions in Afghanistan took place in 2018, when the Afghan Government executed three people.<sup>6</sup> As of 2018, approximately 343 people imprisoned in Afghanistan are under sentence of death.<sup>7</sup>

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

5. Despite ratifying the Convention on the Rights of the Child in 1994,<sup>8</sup> Afghanistan continues to sentence people to death and carry out executions. As explained in a 2019 report published by Quaker United Nations Office (QUNO), a State Party may violate a child's rights under the Convention when it sentences the child's parent to death or

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<sup>1</sup> Law Explorer, "Afghanistan: Death Penalty at the Crossroads," June 25, 2019, <https://lawexplores.com/afghanistan-death-penalty-at-the-crossroads/>.

<sup>2</sup> The Bernard and Audre Rapoport for Human Rights and Justice, "Afghanistan's new Penal Code: Whether or Not to codify Hudud and Qisas," June 26, 2019, <https://law.utexas.edu/humanrights/projects/afghanistans-new-penal-code-whether-or-not-to-codify-hudud-and-qisas/>.

<sup>3</sup> Law Explorer, "Afghanistan: Death Penalty at the Crossroads," June 25, 2019, <https://lawexplores.com/afghanistan-death-penalty-at-the-crossroads/>; Human Rights Watch, "Afghanistan: Halt Further Executions," June 25, 2019, <https://www.hrw.org/news/2016/05/10/afghanistan-halt-further-executions>; Waslat Hasrat-Nazimi, *14 hanged in two days - The death penalty in Afghanistan*, Deutsche Welle (DW), November 23, 2012, <https://www.dw.com/en/14-hanged-in-two-days-the-death-penalty-in-afghanistan/a-16400788>.

<sup>4</sup> Waslat Hasrat-Nazimi, *14 hanged in two days - The death penalty in Afghanistan*, Deutsche Welle (DW), November 23, 2012, <https://www.dw.com/en/14-hanged-in-two-days-the-death-penalty-in-afghanistan/a-16400788>.

<sup>5</sup> Human Rights Watch, "Afghanistan: Halt Further Executions," June 25, 2019, <https://www.hrw.org/news/2016/05/10/afghanistan-halt-further-executions>; Waslat Hasrat-Nazimi, *14 hanged in two days - The death penalty in Afghanistan*, Deutsche Welle (DW), November 23, 2012, <https://www.dw.com/en/14-hanged-in-two-days-the-death-penalty-in-afghanistan/a-16400788>.

<sup>6</sup> Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2018*, by Amnesty International (London, UK: Amnesty International Ltd., April 2019), page 19. <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

<sup>7</sup> Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2018*, by Amnesty International (London, UK: Amnesty International Ltd., April 2019), page 20. <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

<sup>8</sup> United Nations, "United Nations Treaty Collection - Convention on the Rights of the Child," June 27, 2019, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en).

executes the child's parent. In particular, the State Party may violate a child's right to health, information, and protection against discrimination.<sup>9</sup> Moreover, the trauma a child of a parent sentenced to death or executed can rise to the level of torture.<sup>10</sup>

6. According to Afghanistan's most recent State Party Report, the Afghan Government has drafted the Child Act, which stipulates that children shall be free from torture, or cruel, inhuman, or degrading treatment.<sup>11</sup> Yet the State Party Report does not address the specific rights of a child of a parent who has been sentenced to death or executed; nor does it acknowledge the trauma a child may face as a result of a parent's sentencing.

**A. Afghanistan's use of the death penalty violates the right to health of children of parents sentenced to death or executed (Articles 3, 6, 24).**

7. A child of a parent who is executed or sentenced to death can experience trauma as a result of several factors: separation from the parent; stigma; and uncertainty surrounding the parent's execution.<sup>12</sup> These conditions violate the precepts surrounding the best interests of the child, as stipulated in Article 3, and the child's right to health under Article 24.<sup>13</sup> The State Party Report provides no evidence that the judiciary, at the time of sentencing, considers the best interests of the child of the person being sentenced. Nor does it demonstrate that the Afghan Government provides adequate health services to children of parents sentenced to death or executed, despite their vulnerability. It is vital that the Afghan Government provide physical and psycho-social health services to these children and publicize the existence of such services.

**8. Suggested questions:**

- How many people under sentence of death in Afghan prisons have children? What support does the Afghan Government provide to those children?
- How many children reside in prison with a parent? What facilities and measures are in place to ensure the safety and rights of those children?
- At the time of sentencing, what measures are in place to ensure that the sentencing authority considers the best interests of the child of the person being sentenced? Please provide details regarding whether any sentencing authority has ever referred to or applied the best interests of the child standard in the Convention when sentencing a parent.
- After a parent is sentenced to death, how does the Ministry of Labor, Social Affairs, Martyr and Disabilities assess the best interests of the child of the parent and what measures does MoLSAMD take to promote the best interests of such children?

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<sup>9</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (February 2019), at 5.

<sup>10</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (February 2019), at 6.

<sup>11</sup> UN Committee on the Rights of the Child, *Combined second to fifth reports submitted by Afghanistan under article 44 of the Convention due in 2016*, (24 April 2019), CRC/C/AFG/2-5, ¶ 65.

<sup>12</sup> Quaker United Nations Office (QUNO), *Protection of the Rights of Children of Parents Sentenced to Death or Executed: An Expert Legal Analysis*, by Stephanie Fariior (February 2019), at 5, 9, 21.

<sup>13</sup> UN General Assembly, Covenant on the Rights of the Child, 1989, Arts. 3 and 24.

- When a person is imprisoned under sentence of death, do their children have the right to visit? Under what conditions? In what other ways are children allowed to communicate with a parent sentenced to death? What measures are in place to promote a child's right to visit and contact an incarcerated parent? Are visitation and communication procedures for children different from procedures for others seeking to visit or communicate with people who are imprisoned? Is a child ever compelled to pay a fee in order to visit a parent in prison?
- Do government agencies provide training to individuals in the judiciary and the prison system regarding how to engage with and support children of death-sentenced or executed parents?
- To what extent does the Afghan Government offer financial support programs, including income support, travel costs, funeral costs, and medical/health care costs, for children of parents who have been executed or who are under sentence of death?

**B. Lack of transparency in judicial and penal proceedings violates the rights of children to information (Article 9).**

9. Courts and prison officials often fail to inform children of information relevant to a parent's upcoming execution. The trauma children undergo when denied this right to be appropriately informed of the date, time, and location of their parent's pending execution can constitute ill-treatment or torture.<sup>14</sup> Afghan courts and prisons do not have a standardized procedure to notify children of a parent's execution. The Afghan Government should establish a mechanism to provide timely notification to children and other family members as soon as a parent's execution is scheduled.
10. The State Party Report states that the Afghan Government has introduced the Children's Custody Law to support children deprived of family environments.<sup>15</sup> While the State Party Report designates placing children in orphanages as a last resort, it does not address a child's right to maintain personal relations and direct contact with his or her parents or the child's right to be informed of the sentencing and trial proceedings of the parent.<sup>16</sup>

**11. Suggested question:**

- What mechanisms are in place to allow a child to have access to information regarding the status of a parent who is sentenced to death and when and where the parent's execution will take place?

**C. Children of parents sentenced to death or executed are at risk of discrimination based on the parent's alleged political affiliation (Article 2).**

12. The Afghan Government is increasingly relying on the death penalty to demonstrate that it is taking strong measures to crack down on the Taliban and terrorist activities. Since

<sup>14</sup> 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.

<sup>15</sup> UN Committee on the Rights of the Child, *Combined second to fifth reports submitted by Afghanistan under article 44 of the Convention due in 2016*, (24 April 2019), CRC/C/AFG/2-5, ¶¶ 76.

<sup>16</sup> UN Committee on the Rights of the Child, *Combined second to fifth reports submitted by Afghanistan under article 44 of the Convention due in 2016*, (24 April 2019), CRC/C/AFG/2-5, ¶¶ 76, 79.

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.<sup>17</sup> It is unclear whether the Afghan Government takes precautions to reduce the risk of discrimination against children of parents convicted of terrorism-related offenses, particularly if the parents are sentenced to death.

**13. Suggested question:**

- What measures are in place to ensure that children of parents sentenced to death do not face discrimination in any sphere of life?

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<sup>17</sup> 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.afghanistan-analysts.org/afghanistans-latest-executions-responding-to-calls-for-capital-punishment/>.