



**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

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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. This report highlights issues regarding the rights of children of incarcerated and executed parents in Kuwait. The report also offers suggested questions and recommendations for the Committee on the Rights of the Child to present to the Government of Kuwait.

Background on the Death Penalty in Kuwait

2. 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, 34 individuals were sentenced to death in Kuwait, a significant increase from 15 death sentences in 2017.⁴
3. 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

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

4. Kuwait ratified the Convention on the Rights of the Child (CRC) in 1991.⁷ Kuwait continues to sentence people to death, even though doing so violates the rights of children of people sentenced to death. 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.
5. Current law allows incarcerated mothers to raise a child born in prison for the first two years after birth.⁸ 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

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 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.

⁸ 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.

fathers, to parents of any gender who are sentenced to death, or to parents of any gender whose children are above the age of 12.⁹

I. Sentencing a parent to death interferes with a child’s right not to be separated from a parent (Article 9) and is in contravention of the right of the child to have his or her best interests taken as a primary consideration (Article 3, General Comment No. 14).

6. Children have a right to remain with their parents, unless separation is in the child’s best interests.¹⁰ 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.¹¹
7. In a State Party report submitted to the Human Rights Committee regarding compliance with the International Covenant on Civil and Political Rights, 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.¹² This provision is reinforced by Article 218 of the Penal Procedures Code, which provides the same.¹³ Yet neither statute appears to consider commutation of a sentence for a father with a newborn or a parent of any gender who has preexisting children.
8. When questioned in its last appearance before this Committee about “how the best interests of the child were determined and evaluated [...] in criminal proceedings, especially when an adult with children was about to be sentenced to long imprisonment or death,”¹⁴ the government responded that “the courts did take into account the best interests of a child before sentencing a parent to death” but offered no examples or other explanation.¹⁵
9. In its concluding recommendations, this Committee drew the State of Kuwait’s attention to its General Comment No. 14, recommending that the state “strengthen its efforts to ensure that th[e right to have the child’s best interests taken as a primary consideration] is

⁹ 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.

¹⁰ 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), 5.

¹¹ 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), 25.

¹² United Nations Human Rights Committee (HRC), *UN Human Rights Committee: Addendum to the Initial Report of States Parties Due in 1997, Kuwait*, (Dec. 3, 1999), U.N. Doc. CCPR/C/1201/Add.1, 22-23.

¹³ United Nations Human Rights Committee (HRC), *UN Human Rights Committee: Addendum to the Initial Report of States Parties Due in 1997, Kuwait*, (Dec. 3, 1999), U.N. Doc. CCPR/C/1201/Add.1, 23.

¹⁴ United Nations Committee on the Rights of the Child, *Summary Record of the 1819th Meeting: Second Periodic Report of Kuwait on the Implementation of the Convention on the Rights of the Child* (Oct. 23, 2013), U.N. Doc. CRC/C/SR.1819, ¶ 21.

¹⁵ United Nations Committee on the Rights of the Child, *Summary Record of the 1820th Meeting: Second Periodic Report of Kuwait (continued)* (Nov. 4, 2013), U.N. Doc. CRC/C/SR.1820, ¶ 58.

appropriately integrated and consistently applied,” particularly “in judicial proceedings where parents are involved and when sentencing parents to death.”¹⁶

10. In responding to this recommendation, the State Party’s most recent periodic report reiterates the provisions described in paragraph 7 above. The report further suggests that in determining a parent’s sentence, authorities balance the best interests of the child with “society’s right to punishment.” The report also states that judges have discretion to reduce a person’s sentence, but it provides no assurances that judges can or do take into account the best interests of the child when exercising this discretion.

11. Suggested questions:

- How many people under sentence of death in Kuwait have children?
- As of 2020, how many children in Kuwait have a parent in detention (under sentence of death or otherwise)?
- What are the visitation rights of parents and the children of parents sentenced to death for children in the following circumstances: (a) children over 12 years of age (regardless of the gender of their incarcerated parent); (b) fathers of children under 12 years of age; and (c) mothers or fathers of children under 2 years of age where such children are not born during the parent’s incarceration?
- How frequently are visits allowed and under what conditions, for each of the types of parent/child relationships described above?
- How may the child of an incarcerated parent communicate with the child’s parent?
- In what circumstances would a prison prohibit a relationship between a person on death row and their child?
- In determining where a person will be held (i.e., which prison facility), how do authorities take into account the location of the person’s children?

12. Suggested recommendations:

- 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.

¹⁶ United Nations Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Kuwait* (Oct. 29, 2013), U.N. Doc. CRC/C/KWT/CO/2, ¶ 32.

- 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.

II. Sentencing a parent to death violates a child’s right to health and safety (Articles 3, 6, 19, 24).

13. A parent’s death sentence may seriously affect the mental and physical health of a child.¹⁷ 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.¹⁸ 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.¹⁹
14. 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.²⁰ 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.²¹
15. The Government of Kuwait has not offered evidence that the judiciary considers a child’s health at the time of sentencing.
16. In its last report to this Committee, the State of Kuwait reported that it “provide[s] financial assistance to families,” which includes public assistance awards in the event of “financial inability of the family provider to meet his private expenses, as in the case of [...] the

¹⁷ 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.

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), 16.

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), 15.

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.

families of persons serving a prison sentence” and “the wives and children of convicted prisoners for whom the State has an obligation to ensure a decent life when they lack any source of income.”²² However, it is not clear under what circumstances such assistance is available, including the volume of financial assistance and any qualifications that must be met before assistance is provided.

17. Suggested questions:

- What supports are provided for children of parents sentenced to death? How many children receive such support?
- What measures are in place to ensure that children of parents sentenced to death do not face discrimination or stigma as a result of their parent’s sentence?
- How does the judiciary consider the health and economic stability of a child when sentencing a parent?
- Under what circumstances is financial assistance available to children or families of individuals sentenced to death?

18. Suggested recommendations:

- 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.

III. Issue 3: Sentencing a parent to death may violate a child’s right to freedom from torture and other ill-treatment (Article 37).

19. 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

²² 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, ¶ 147.

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 Farior (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.

20. 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
21. 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.
22. In its last review before this Committee, the Government was asked "whether images of executions [...] were indeed published in the media."²⁵ The Government responded that "it was difficult to prevent the publication, in particular on the Internet, of images of executions."²⁶ The Government did not offer an explanation for the attendance of news media at executions or their aftermath.

23. Suggested questions:

- What mechanisms are in place to provide a child with information regarding the status of a parent who is sentenced to death (e.g., appeals or other ongoing legal processes)?
- What mechanisms are in place to provide a child with information regarding the date and location of a parent's execution?
- What mechanisms are in place to provide a child with information about a parent's execution after such execution has occurred?
- For what purpose does the government permit access to the sites of executions by journalists or other media with cameras or other equipment?

24. Suggested recommendations:

- 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.

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.

²⁵ United Nations Committee on the Rights of the Child, *Summary Record of the 1820th Meeting: Second Periodic Report of Kuwait (continued)* (Nov. 4, 2013), U.N. Doc. CRC/C/SR.1820, ¶ 55.

²⁶ United Nations Committee on the Rights of the Child, *Summary Record of the 1820th Meeting: Second Periodic Report of Kuwait (continued)* (Nov. 4, 2013), U.N. Doc. CRC/C/SR.1820, ¶ 58.