



The Republic of Korea's Compliance 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

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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.

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 the Republic of Korea. It focuses on the child's right not to be separated from the parent, the child's right to health and safety, and the child's right to be free from torture and ill-treatment. The report also offers suggested questions and recommendations for the Committee on the Rights of the Child to offer to the Government of the Republic of Korea regarding these issues.

Background on the Death Penalty in the Republic of Korea

2. In 1998 President Kim Dae-Jung established a de facto moratorium on the death penalty in the Republic of Korea.¹ President Kim was a former death row inmate (having been sentenced to death on charges of sedition and conspiracy) and opposed the death penalty.² The Republic of Korea, however, has not taken steps to abolish the death penalty by law and persons remain under sentence of death.³
3. South Korean law authorizes the death penalty for a variety of crimes. Consistent with Article 37(a) of the Convention, the South Korea Juvenile Act requires that any death sentence or sentence of life imprisonment imposed on someone who was under the age of 18 at the time of the offense be commuted to fifteen years' imprisonment.⁴
4. South Korea has not carried out any executions since 1997, but according to available information, at least 61 people were on death row as of 2018.⁵ Korean authorities refer to people under sentence of death as "maximum-sentence prisoners."⁶ Despite the de facto moratorium, courts continue to sentence people to death. The most recent death sentence was confirmed in 2016.⁷ Prisoners sentenced to death are usually kept in solitary confinement under the constant threat of execution.⁸ Between 1997 and 2018, five people under sentence of death committed suicide while in prison.⁹

¹ Cornell Center on the Death Penalty Worldwide, "Death Penalty Database-South Korea," accessed July 18, 2019, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f1-6>.

² Cornell Center on the Death Penalty Worldwide, "Death Penalty Database-South Korea," accessed July 18, 2019, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f1-6>.

³ Amnesty International, *Amnesty International Global Report: The State of the World's Human Rights 2013*, by Amnesty International (London, UK: Amnesty International Ltd., May 2013), 152.

⁴ Cornell Center on the Death Penalty Worldwide, "Death Penalty Database-South Korea," accessed July 18, 2019, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f1-6>.

⁵ Amnesty International, *Amnesty International Global Report: The State of the World's Human Rights 2013*, by Amnesty International (London, UK: Amnesty International Ltd., May 2013), 152.

⁶ Shin Min-jung, *Letters from inmates on death row*, Hankyoreh, Oct. 16, 2018, available at http://english.hani.co.kr/arti/english_edition/e_national/866060.html (accessed July 30, 2019).

⁷ Shin Min-jung, *South Korea has 61 people currently on death row*, Hankyoreh, Oct. 16, 2018, available at http://english.hani.co.kr/arti/english_edition/e_national/866061.html (accessed July 30, 2019).

⁸ Cornell Center on the Death Penalty Worldwide, "Death Penalty Database-South Korea," July 18, 2019, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f1-6>.

⁹ Shin Min-jung, *Letters from inmates on death row*, Hankyoreh, Oct. 16, 2018, available at http://english.hani.co.kr/arti/english_edition/e_national/866060.html (accessed July 30, 2019).

5. In a 2018 study, the National Human Rights Commission of Korea found that nearly 7 in 10 Koreans supported replacing capital punishment with other punitive measures, such as life imprisonment.¹⁰

The Republic of Korea fails to uphold its obligations under the Convention on the Rights of the Child

6. The Republic of Korea ratified the Convention on the Rights of the Child (CRC) in 1991.¹¹ Nonetheless, the Republic of Korea continues to sentence people to death, even though doing so violates the rights of children of people under sentence of death. According to a 2019 report published by Quaker United Nations Office (QUNO), death sentences or executions of a parent can violate a child's right to health, information, and protection from discrimination.¹² Moreover, the trauma experienced by a child of an incarcerated or executed parent can rise to the level of torture,¹³ compromising a child's right to an adequate standard of living.¹⁴
7. Current laws allow incarcerated parents to raise a newborn child until the child reaches the age of 18 months. But the laws are silent as to the rights of children of incarcerated parents after that age.¹⁵

I. Sentencing parents to death interferes with the child's right not to be separated from a parent (Article 9; List of Issues paragraphs 18(g), 19).

8. Children have a right not to face separation from their parent unless separation is in the best interest of the child.¹⁶ If the parent is sentenced to death and therefore imprisoned, the child has a right to maintain a personal relationship with the parent through direct contact. Forced separation of the parent and child when the child is not permitted to visit the parent must be permitted only after careful consideration of the best interests of the child.¹⁷ The Combined Fifth and Sixth Periodic Reports from the Republic of Korea make no mention of whether and how the best interests of the child are considered in determining whether and under what conditions a child may visit a parent who has been sentenced to death.

¹⁰ Korea Herald, *7 in 10 Koreans oppose death penalty*, Korea Herald, Oct. 11, 2018, available at <http://www.koreaherald.com/view.php?ud=20181011000808> (accessed July 30, 2019).

¹¹ United Nations, "United Nations Treaty Collection - Convention on the Rights of the Child," accessed July 18, 2019, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en.

¹² 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 (New York, US: Quaker United Nations Office, Feb. 2019), 5.

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 Fariior (Feb. 2019), 6.

¹⁴ United Nations Covenant on the Rights of the Child, 1989, Art. 27.

¹⁵ United Nations Committee on the Rights of the Child, *Annex to the Combined fifth reports and sixth Periodic Report submitted by the Republic of Korea*, (Jan. 22, 2018), U.N. Doc. CRC/C/KOR/5-6, ¶ VI.

¹⁶ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 25.

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 Fariior (New York, US: Quaker United Nations Office, Feb. 2019), 25.

9. The Committee requested information regarding children born in prison and children incarcerated together with their parents, including both children born in and outside of prison.¹⁸ In paragraph 19. The Committee also requested data about the number of children separated from their families and either placed in foster care or adopted.¹⁹
10. The only evidence of Korea's compliance with a child's right to non-separation is the Administration and Treatment of Correctional Institution Inmates Act, which gives two to three months of parole to an inmate who is about to give birth, allowing them to recover outside of prison. This act may also allow some inmates to care for their child for up to 18 months. According to a table documenting the number of children raised in prison each year, 12 children lived in prison raised by their incarcerated parent in 2016.²⁰ The State Party Report does not explain whether a child is separated from the parent after the age of 18 months, or whether prison authorities allow children to visit parents after that time.²¹

11. Suggested questions:

- How many prisoners who are under sentence of death in the Republic of Korea have children?
- As of 2019, how many children are living in prison with a parent?
- What are the visitation rights of parents and the children of parents sentenced to death? How frequently are visits allowed and what are the conditions for visits?
- How may the child of an incarcerated parent communicate with their parent?
- In what circumstances would a prison prohibit a relationship with a death row prisoner and their child?

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 under sentence of death to a sentence that is consistent with international human rights standards.
- Ensure that all judicial authorities, at the time of sentencing, take into account the best interests of any child of the person 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 assess whether allowing a child to visit a parent sentenced to death would be in the best interests of the child, 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

¹⁸ United Nations Committee on the Rights of the Child, *Republic of Korea List of Issues*, (Feb. 19, 2019), U.N. Doc. CRC/C/KOR/5-6, ¶ 18.

¹⁹ United Nations Committee on the Rights of the Child, *Republic of Korea List of Issues*, (Feb. 19, 2019), U.N. Doc. CRC/C/KOR/5-6, ¶ 19

²⁰ United Nations Committee on the Rights of the Child, *Annex to the Combined fifth reports and sixth Periodic Report submitted by the Republic of Korea*, (Jan. 22, 2018), U.N. Doc. CRC/C/KOR/5-6, ¶ VI.

²¹ United Nations Committee on the Rights of the Child, *Annex to the Combined fifth reports and sixth Periodic Report submitted by the Republic of Korea*, (Jan. 22, 2018), U.N. Doc. CRC/C/KOR/5-6, ¶ VI.

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 assess whether allowing a child to communicate with a parent sentenced to death would be in the best interests of the child, 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 the child’s right to health and safety (Articles 3, 6, 19, 24; List of Issues paragraph 8(f)).

13. The Committee asked the State Party to specify measures taken to “[e]nsure a coherent policy to protect children of imprisoned parents.”²² Studies have shown the effect of a parent being sentenced to death on the mental and physical health of a child.²³ A child of a parent who is sentenced to death can experience trauma as a result of the separation from the parent, the stigma of being a child of a parent sentenced to death, and from the uncertainty surrounding the parent’s execution.²⁴ 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 manifestations²⁵
14. Moreover, 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.²⁶ Often parents sentenced to death come from disproportionately poor or disadvantaged backgrounds, and this loss of income can aggravate the child’s economic circumstances.²⁷

²² United Nations Committee on the Rights of the Child, *Republic of Korea List of Issues*, (Feb. 19, 2019), U.N. Doc. CRC/C/KOR/5-6, ¶ 8.

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 Fariior (New York, US: Quaker United Nations Office, Feb. 2019), 15.

²⁴ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 16.

²⁵ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 15.

²⁶ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 15.

²⁷ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 15.

15. It is unclear whether the judiciary considers the child's health at the time of sentencing, or whether the Government of South Korea provides adequate health services to children of parents sentenced to death.

16. Suggested questions:

- What measures are in place in prisons to ensure the health and safety of children raised in prisons?
- What types of support are available and 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 in any sphere of life?

17. Suggested recommendations:

- Ensure that, at the time of sentencing, courts take into account how the sentence may affect the mental and physical health of any child of the person being sentenced, particularly if the court is considering imposing a sentence of death.
- Ensure that all children of persons sentenced to death receive ongoing, comprehensive, high-quality care for their psychological and physical health and that their health care providers are trained in providing care to children of people sentenced to death.
- Provide training to educators working with children of parents sentenced to death to identify signs of trauma and to prevent and address bullying and other forms of stigmatization on the part of their peers or educators.
- Provide caregivers providing care to children of people sentenced to death with adequate financial support to ensure that the children do not face a diminished standard of living as a result of the parent's death sentence.

III. Sentencing a parent to death may violate a child's right to freedom from torture and other ill-treatment (Article 37, List of Issues paragraph 8(f)).

18. 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. Beyond physical pain, the mental anguish and suffering a child may face is cruel, and constitutes ill-treatment that may rise to the level of torture.²⁸ The children of some of the 61 people under sentence of death face the added trauma caused by the uncertainty of knowing that the Government of the Republic of Korea could resume executions at any time.²⁹

²⁸ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 16.

²⁹ 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 (New York, US: Quaker United Nations Office, Feb. 2019), 16.

19. The Committee asked the State Party to specify measures taken to “[e]nsure a coherent policy to protect children of imprisoned parents.”³⁰ The State Party Report does not indicate that the Republic of Korea has any policy to protect children from ill-treatment or torture that may result from a parent’s death sentence.

20. Suggested questions:

- What information does a child of a parent under sentence of death receive regarding the parent’s death sentence and the date of the parent’s execution?
- What support or remedies do authorities provide to children of people sentenced to death as victims of torture and ill-treatment, consistent with Article 39 of the Convention?

21. Suggested recommendations:

- Provide comprehensive support to children of people sentenced to death, to promote their physical and psychological recovery and social reintegration in an environment that fosters the health, self-respect, and dignity of the child, consistent with Article 39.
- Ensure that a child whose parent has been sentenced to death has timely and complete access to information about the parent’s sentence and when it will be carried out, unless such information is not in the best interests of the child.

³⁰ United Nations Committee on the Rights of the Child, *Republic of Korea List of Issues*, (Feb. 19, 2019), U.N. Doc. CRC/C/KOR/5-6, ¶ 8.