

10.10
2021

WORLD DAY AGAINST
THE DEATH PENALTY



DETAILED FACTSHEET

WOMEN
SENTENCED TO DEATH:
AN INVISIBLE REALITY

www.worldcoalition.org

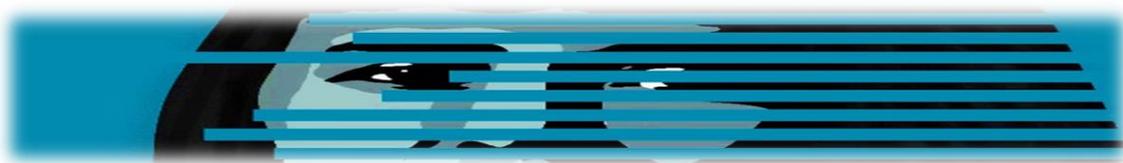
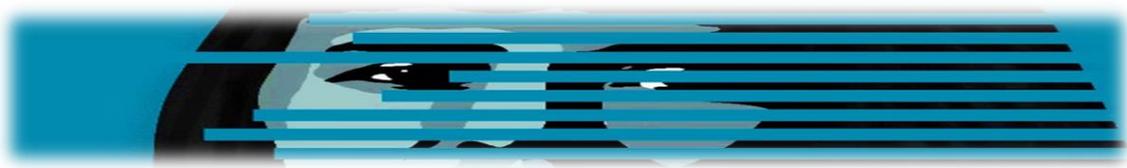


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INTRODUCTION

On 10 October 2021, the World Coalition Against the Death Penalty and other abolitionist organizations worldwide will celebrate the 19th World Day Against the Death Penalty. This year, the World Day is dedicated to **women** who risk being sentenced to death, who have received a death sentence, who have been executed, and to those who have had their death sentences commuted, exonerated, or pardoned. This detailed factsheet will use the phrase “women sentenced to death” as an inclusive phrase for all of these categories. As women represent a small percentage of those on death row globally, very little has been reported about these women. Yet we can learn much by analyzing their crimes, their lives prior to the crimes, and the conditions under which they are detained on death row.

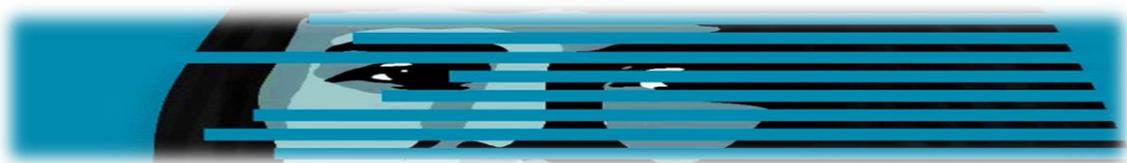
Amnesty International recorded that of the 483 people known to have been executed in 2020, sixteen of whom were women.¹ The Cornell Center on the Death Penalty Worldwide estimates that women represent less than five percent of the world’s death row population and less than five percent of the world’s executions.² Yet there is a dearth of information available about the more than 800 women currently on death row around the world.³ This statistic does not include numbers from China, which are currently unknown. This detailed factsheet aims to shine a light on the significant patterns of arbitrariness and discrimination in the application of the death penalty to women.

The information provided here is divided into three sections. The first provides a summary of the types of crimes for which women are commonly sentenced to death. The second explores how gender discrimination affects women’s experience in capital cases/as capital defendants. The third section provides an overview of the applicable international standards with regard to the conditions of detention of women sentenced to death.

¹ Amnesty International, *Death Sentences and Executions 2020*, April 2021, pg. 9. These figures do not include the thousands of executions that the organization believes continued to be carried out in China.

² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018, available at: bit.ly/MoreThanHerCrime.

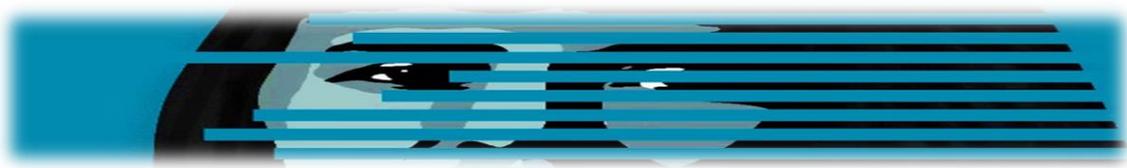
³ Cornell Center on the Death Penalty Worldwide, 2021.



METHODOLOGY

This detailed factsheet has been prepared by the World Coalition Against the Death Penalty in partnership with the Advocates for Human Rights and with the assistance of the law firm Ballard Spahr LLP. The authors drew heavily from Cornell Center on the Death Penalty Worldwide database and Amnesty International's publications, among others. Many thanks to Harm Reduction International (HRI), the International Federation of ACATs (FIACAT) and Amnesty International for their contributions.

Research for this publication was, in large part, conducted by the Cornell Center on the Death Penalty Worldwide. Their full report is published in *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018. *All references are to this publication except where otherwise indicated.* Direct quotes from this report are referenced, however, with a specific page number.



BACKGROUND: WHAT IS GENDER DISCRIMINATION?

In order to understand what gender discrimination is, it is first important to define gender. Gender is used to describe characteristics considered “masculine” or “feminine” that are socially constructed.⁴

Gender-based discrimination is, as the name implies, a form of discrimination based on a person’s gender that can manifest in a multitude of ways, both subtle and overt.⁵ In capital cases, multiple forms of gender bias can be present. These biases may work to both the benefit and detriment of female capital defendants, which separates them from their male counterparts. For instance, in some countries, including **Belarus, Tajikistan, and Zimbabwe** retain the death penalty but prohibit its application to women altogether.

Due to gender stereotypes and biases women in certain contexts are more likely to be perceived either as victims or perpetrators. This may be particularly true if their behavior does not align with socially imposed gender norms.⁶ This phenomenon can concern the entire legal and penal system as a whole, from arrest to sentencing, and beyond. For example, when women are perceived to be the victim, or when their behaviors align with gender norms, such as the caregiver, they may benefit from a more lenient sentence. In contrast, women perceived as the perpetrator of the crime are more likely to receive a harsher punishment than men accused of similar offenses.⁷

Gender-based bias permeates the criminal justice system, manifesting itself in the investigative stage in the form of law enforcement biases; the trial stage, in which a fair trial may be unavailable for economically disadvantaged and uneducated women⁸; and in sentencing, when women defendants are sentenced to death after being prevented from arguing that gender and patriarchy affected their criminal conduct. Furthermore, women are often absent from or grossly underrepresented in decision-making positions within legal systems – i.e. underrepresented in positions as judges, prosecutors, court administrators, and the like – in many countries⁹. This

⁴ *Glossary and Working Concepts* authored by Cornell Center on the Death Penalty Worldwide and Harm Reduction International

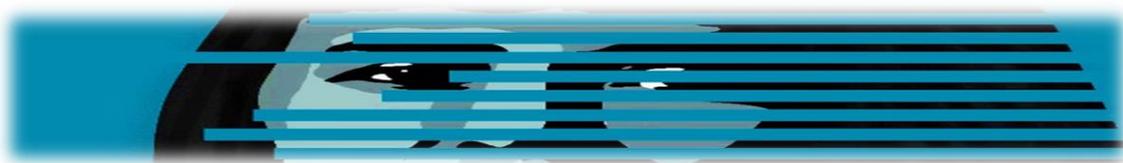
⁵ Ibid

⁶ To learn more about socially imposed norms on gender and how they are impacted by the death penalty, please read the brief on transgender individuals facing the death penalty available on the webpage of the World Day : <https://worldcoalition.org/campagne/19th-world-day-against-the-death-penalty/>

⁷ Emma Milne and Jackie Turton, *Understanding Violent Women*, pp. 124-25, *Women and the Criminal Justice System: Falling Victim and Offenders?*, Palgrave MacMillan, 2018.

⁸ While both men and women are impacted by poverty, according to the global human rights organization, Oxfam International, “women are still more likely than men to live in poverty.” This is due in part to the multifaceted issue of gender inequality, which amongst other issues, contributes to a lack of decent work (with up to 75% of women in developing regions working informally, or without legal rights, employment contracts, etc) and lower wages for women who are in the workforce (up to 24% less than men on a global average). <https://www.oxfam.org/en/why-majority-worlds-poor-are-women>

⁹ For instance, in 2014, 54% of judges in OECD countries were women, but they were still significantly underrepresented in supreme courts (33,6%), in the presidencies of courts of appeal (28%) or in high courts (18,6%). European Parliament, “mapping the Representation of Women and Men in Legal professions Across



underrepresentation is made more problematic in countries that retain the death penalty (“retentionist” countries) where the consequences are fatal. As suggested in the Cornell Center on the Death Penalty Worldwide report *Judged for More than Her Crime*, “[t]he absence of women making key decisions over the course of criminal prosecutions may be another contributing factor for the justice system’s failure to take into account women’s experiences.”¹⁰

With regard to international norms, women are universally exempted from execution in certain circumstances, for instance when pregnant or nursing. However, this relates more to safeguarding the best interest of the child rather than protecting the mother from execution.

1. CRIMES FOR WHICH WOMEN HAVE BEEN SENTENCED TO DEATH

While women represent the minority of all prisoners sentenced to death, and are executed at lower rates than men, the crimes for which they are charged and then condemned to death reveal a gender-bias for those charges, or at the very least do not take into account mitigating circumstances that arise from gender-based discriminations. For example, according to the data provided by the Cornell Center on the Death Penalty Worldwide, women convicted of murder have often lashed out against an abusive husband or sex offender; women convicted of drug charges often have been lured into drug trafficking because they are women; women convicted of “adultery” can be survivors of sexual assault; and women have often been the subject of charges such as “witchcraft” and “blasphemy”.

1.1. Murder

Many documented known death sentences imposed on women are imposed for the crime of murder. These crimes frequently involved the killing of a close family member, following gender-based violence. Many of these cases result from long term abuse of the female defendant and a lack of effective assistance for abuse victims. Faced with economic dependence on their husbands, the fear of losing custody of their children, and an inability to obtain a divorce, women turn to violent self-help. According to the Cornell Center on the Death Penalty Worldwide, “[i]n **China**, which executes the most women in the world, one expert estimated that a significant number, possible up to half, of the women sentenced to death for murder had killed family members.”¹¹ It is also worth noting that murder is punishable by death in retentionist countries, more than other crimes.

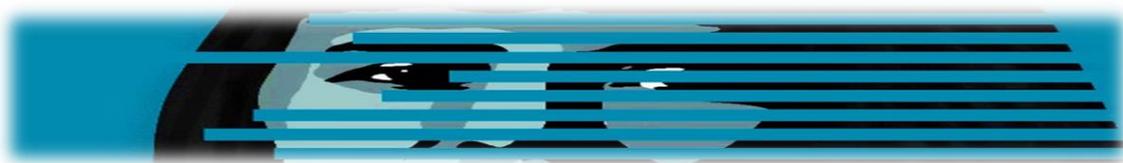
In documented cases of domestic abuse, evidence may be difficult to gather, particularly if the abuse is primarily emotional or verbal. There may be no witnesses to the abuse, and the victim may be reluctant to report it and testify due to stigma or a distrust of the process as shown by the

the EU”, 2017, available :

[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU\(2017\)596804_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU(2017)596804_EN.pdf)

¹⁰ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018, available at: bit.ly/MoreThanHerCrime pg 8

¹¹ Ibid, pg 11



Cornell Center on the Death Penalty Worldwide. Additionally, women face significant barriers in convincing a court that they acted in self-defense when committing murder. The defendant must show that she reasonably perceived an imminent risk of bodily harm or death. However, a woman who has been repeatedly abused may reasonably perceive danger that is omnipresent but not immediate.¹²

As the Office of the U.N. High Commissioner for Human Rights has noted, it is “extremely rare” for domestic abuse to be considered a mitigating factor in sentencing.¹³ Moreover, for countries in which death is the mandatory punishment for murder, there is no mechanism that would allow courts to consider evidence of abuse at sentencing. This contributes to the profoundly arbitrary nature of a mandatory death sentence- for both men and women alike.

Encouraging Signs: Consideration of Domestic Violence in Capital Trials

In 2010, the **USA State of Tennessee**’s governor commuted the death sentence of Gaile Owens to life in prison. Owens was sentenced to death in 1986 for hiring a man to murder her husband. The governor said that his decision was based in part on the possibility that Owens was regularly abused by her husband.¹⁴ In June 2014, **China**’s Supreme Court overturned the death sentence of Li Yan, whose high-profile case had elicited widespread public calls for leniency. Li Yan killed her husband with the butt of a rifle that he had brandished during a fight. Throughout their marriage, he beat and kicked her, put out cigarettes on her face, and locked her in their home during the day and out overnight.¹⁵

1.2. Drug Offenses

Conviction for drug-related offenses is another common reason for women to be on death row, particularly in **Asia** and the **Middle East**. Gender inequality plays an important role in women being lured into drug related crimes. Research indicates that many women tend to engage in the drug market due to economic and social marginalization, as is the same of men.¹⁶ Women can be employed by drug traffickers as drug couriers because they are less likely to be caught/perceived by law enforcement as criminals, in many countries, and more easily controlled as they lack

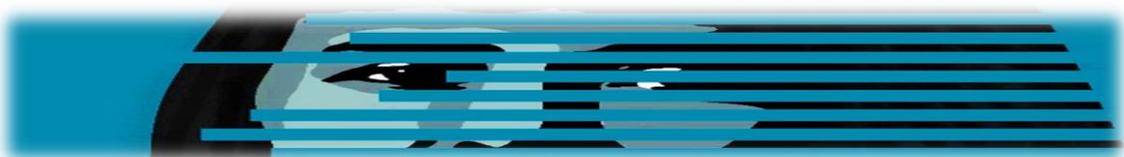
¹² Michigan Women’s Justice and Clemency Project, Position Statement, <http://umich.edu/~clemency/position.html>, last accessed Jun. 20, 2018.

¹³ U.N. Office of the High Commissioner for Human Rights, Death penalty disproportionately affects the poor, U.N. rights experts warn <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>, Oct. 10, 2017.

¹⁴ Death Penalty Information Center, Tennessee Governor Commutes Death Sentence of Gaile Owens, <https://deathpenaltyinfo.org/news/tennessee-governor-commutes-death-sentence-of-gaile-owens> Jul 14, 2010

¹⁵ Human Rights Watch, China: Commute Death Sentence in Domestic Violence Case, <https://www.hrw.org/news/2013/01/30/china-commute-death-sentence-domestic-violence-case>, Jan. 30, 2013.

¹⁶ Melvina T. Sumter et al., Mule Tales: An Exploration of Motives among Female Drug Smugglers, The Global Center for School Counseling Outcomes Research, Evaluation, & Development, <https://everypiecematters.com/jget/volume01-issue01/mule-tales-an-exploration-of-motives-among-female-drug-smugglers.html>, May 31, 2017.



resources to buy or sell drugs for their own profit.¹⁷ Admittedly the circumstances surrounding entry into the drug market is also applicable to men. But as previously established (*see footnote n^o7*), there is a gender gap in poverty that starts amongst children and increases into adult ages.¹⁸

Merri Utami: Drug Traffickers Exploited Migrant Worker in Indonesia

On 20 May 2002, Merri Utami was convicted of importing heroin in Indonesia and sentenced to death by firing squad. She has been on death row ever since. Merri denied knowledge of the drugs she transported in the handbag given to her by her lover and insisted that she was targeted by professional drug traffickers. Merri's life prior to conviction was shaped by poverty, abuse by her violent husband, and exploitation, yet the court never took this evidence into consideration.¹⁹

1.3. Offenses Involving Sexual Morality

Adultery, not considered a crime under international law, is another offense for which women are disproportionately sentenced to death. In jurisdictions that apply Sharia law, *zina*, the criminalization of consensual sexual relations outside marriage, appears to be gender neutral. In practice, however, according to the data available in 2018, women were convicted of *zina* at a rate disproportionate to men. Moreover, women confront barriers not presented to men. Extramarital pregnancy, for example, is *prima facie* evidence of *zina*. Not only is that not gender neutral, it does not necessarily follow from adultery, since it could be the result of rape.²⁰ In **Iran**, a pregnant, married, rape victim accused of “adultery” faces a near insurmountable burden to prove her innocence.²¹ She must present the testimony of four eyewitnesses to the rape to clear her name. In **Pakistan**, Zafran Bibi, a woman who reported she was raped by her brother-in-law was charged with adultery and sentenced to death²². Given the high risk of being prosecuted for adultery, women are reluctant to report incidences of rape or sexual abuse.

The method of execution for adultery under Sharia law is death by stoning, where the individual is partially buried, and stones are thrown at them until they die. Yet women face discrimination

¹⁷ Hossein Raeesi, Interview with the Cornell Center on the Death Penalty Worldwide, Feb. 10, 2015.

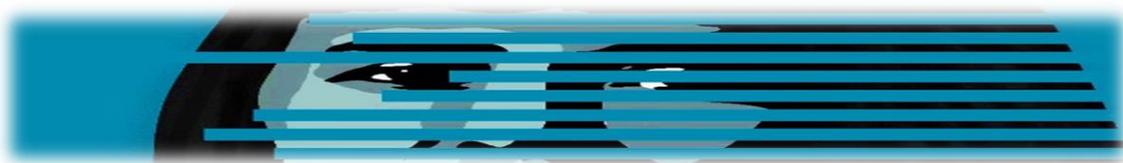
¹⁸ *Gender differences in poverty and household composition through the life-cycle : a global perspective (English)*. Policy Research working paper: World Bank Group. <http://documents.worldbank.org/curated/en/135731520343670750/Gender-differences-in-poverty-and-household-composition-through-the-life-cycle-a-global-perspective>

¹⁹ Cornell Center on the Death Penalty Worldwide, Merri Utami: Migrant Worker Unwittingly Exploited by Drug Traffickers in Indonesia, <https://deathpenaltyworldwide.org/merri-utami-migrant-domestic-worker-unwittingly-exploited-by-drug-traffickers-in-indonesia/>, October 28, 2020.

²⁰ KARAMAH: Muslim Women Lawyers For Human Rights, Zina, Rape, and Islamic Law: An Islamic Legal Analysis of the Rape Laws in Pakistan, p. 4, <https://karamah.org/wp-content/uploads/2020/04/Zina-Rape-and-Islamic-Law-An-Islamic-Legal-Analysis-of-the-Rape-Laws-in-Pakistan.pdf>.

²¹ Hossein Raeesi, Interview with the Cornell Center on the Death Penalty Worldwide, Feb. 10, 2015.

²² “Working Group on the issue of discrimination against women in law and in practice, Submission by the Cornell Center on the Death Penalty Worldwide and the World Coalition Against the Death Penalty”, p.13, <https://www.ohchr.org/Documents/Issues/Women/WG/DeprivedLiberty/CSO/Cornell%20CenterDeath%20Penalty%20Worldwide-WorldwideCoalitionAgainstDeathPenalty.pdf>, Oct 18 2018.



even in the logistics of execution. A defendant who survives the stoning can be pardoned. Women are buried to their breasts, whereas men are buried to the waist. A man may be able to dodge the stones and thereby avoid execution, but it is unlikely that a woman would be able to do the same. While stoning remains a legal punishment for countries that impose a certain type of Sharia law, it is to be noted that stoning is rarely applied in practice, and a case of stoning has not been recorded in years due to international pressure.

Crimes involving sexual morality are incredibly society specific and can arise from limited access to protections and options from unhealthy marriages. As explained by Narges Mohammadi, a human rights defender in Iran having once been jailed with a woman who had been sentenced to death for *zina*; “[this] woman has to lose her life because of her relationship with a man. Do you know what the root cause of this crime was? This woman, like all Iranian women, has been deprived of the right to divorce. Is this woman guilty? In my opinion, the system that brought her here by depriving her of this right is the guilty party. So, this woman has been victimized once by one having the right to divorce and victimized again in practice, when she was punished for being unable to divorce.”²³

Women can be executed in **Iran** for crimes beyond sexual morality²⁴. Women accused of sex crimes may choose not to legally defend themselves because after acquittal their male relatives may still either murder them (which would be treated as an honor killing, receiving minimal punishment) or require their suicide.²⁵ At least 153 women were executed in Iran between 2010-2020.²⁶

1.4. Terrorism Related Offenses

In **Iran, Iraq, Pakistan, Afghanistan** and **India** and elsewhere, women face capital punishment for terrorism-related offenses. Terrorism charges in these countries are applied in various national contexts, particularly with regards to national security. For example, in **Iraq**, terrorism related offenses that end in capital punishment are characterized by accusation of belonging to the Islamic State of Iraq and the Levant (ISIS). Harsh sentences are reserved for Iraqi and foreign women who traveled to live under ISIS rule, married ISIS members, or received money and benefits from ISIS after their husbands died.²⁷ The detention of these women is not up to international standards. Frequently they are denied opportunities for substantive defense as attorneys do not always have

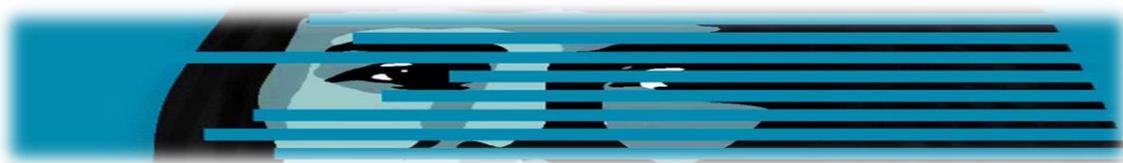
²³ Iran Human Rights and Ensemble Contre la peine de mort, Annual Report on the death penalty in Iran 2020 https://iranhr.net/media/files/Rapport_iran_2021-gb-290321-BD.pdf, pg 7.

²⁴ Capital Punishment U.K., Female hangings worldwide 1988 – date. <http://capitalpunishmentuk.org/femhanged.html>, last accessed 22 June, 2021.

²⁵ Database at The Cornell Center on Death Penalty Worldwide, available here: <https://deathpenaltyworldwide.org/database>.

²⁶ Iran Human Rights and Ensemble Contre la peine de mort, Annual Report on the death penalty in Iran 2020 https://iranhr.net/media/files/Rapport_iran_2021-gb-290321-BD.pdf, pg 83.

²⁷ Human Rights Watch, Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials Rushed Proceedings, Lack of Due Process, Disproportionate Sentences, <https://www.hrw.org/news/2018/06/21/iraq-change-approach-foreign-women-children-isis-linked-trials>, Jun. 21, 2018.



access to their clients prior to trial, or attorneys are not always trained and prepared to raise a defense surrounding the question of duress and exploitation.²⁸ They are denied effective counsel. Attorneys, if appointed, are unable to speak with their clients prior to trials, are not allowed to summon witnesses, and have no access to translators, among other barriers. The result is often a sentence of life in prison or capital punishment.²⁹

Cameroon – Charges Related to National Security

In 2020, three women – Damaris Doukoya, Dawandala Marie and Weteya Martha were exonerated by the military tribunal of Maroua. The three had previously been sentenced to death on charges of “illegal immigration,” “spying,” “complicity of insurrections,” and “belonging to an armed group” after fleeing the Nigerian border, where they lived and worked with their husbands, to escape the violence of the Boko Haram.³⁰

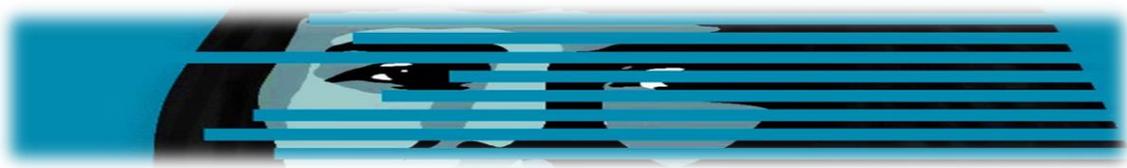
1.5. Witchcraft

Witchcraft is the perception that misfortunes such as death, illness, accidents, loss of livestock and droughts are caused by magical means directed by another person. It is typically women who are accused of crimes related to “sorcery”, and the term “witch” is often applied to women, although men have been accused of witchcraft as well. According to the data provided in Cornell Center on the Death Penalty Worldwide’s report in 2018, **Saudi Arabia** sentenced the most women to death for witchcraft.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Amnesty International, Death Sentences and Executions 2020, April 2021, pg. 50.



2. CIRCUMSTANCES PRIOR TO CONVICTION

According to the Cornell Center on the Death Penalty Worldwide, the death penalty disproportionately affects the economically disadvantaged and vulnerable; those with mental disorders or intellectual disabilities³¹; and members of racial, ethnic, or religious minorities. For the women accused of capital offenses, this marginalization is compounded by “gender stereotypes, stigma, harmful and patriarchal cultural norms, and gender-based violence.”³² This has “an adverse impact on the ability of women to gain access to justice on an equal basis with men.”³³

2.1. Juveniles

International law prohibits the imposition of the death sentence on children under the age of 18 at the time of the offense.³⁴ However, failures of the legal system to accurately verify an offender’s age has led some countries to continue to execute juveniles.³⁵ According to the statistics found by the Cornell Center on the Death Penalty Worldwide, the crimes for which girls have been sentenced to death almost always involve gender-based violence, child marriage, or sexual abuse. However, many trial courts worldwide fail to take into account gender-based violence as a mitigating factor to reduce sentencing.³⁶ Similar to women above the age of 18, often in cases where a female minor has killed her abuser, she is not able to raise domestic violence as a defense or a mitigating factor to sentencing. The mental health effects of child marriage, such as post-traumatic stress and depression, likewise are rarely taken into account.³⁷

³¹ World Coalition Against the Death Penalty, “Mental Disorder is Never a Crime, Care Don’t Kill”, Leaflet, World Day Against the Death Penalty, 2014.

³² U.N. Office of the High Commissioner for Human Rights, Death penalty disproportionately affects the poor, U.N. rights experts warn, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>, Oct. 10, 2017.

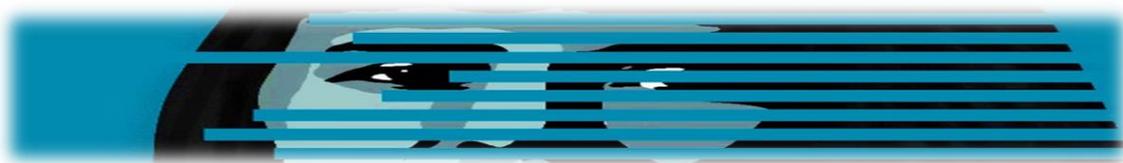
³³ Ibid.

³⁴ International Cove. on Civil and Political Rights (ICCPR); Conv. on the Rights of the Child (CRC), art. 37(a). The CRC is one of the most widely ratified treaties in the world. Every U.N. member is a state party to this treaty, except the United States.

³⁵ Sandra Babcock, “Deciding Who Lives and Who Dies: Eligibility for Capital Punishment Under National and International Law,” p. 5, Unpublished manuscript on file with the Cornell Center on the Death Penalty Worldwide.

³⁶ The failure of courts to exercise sentencing leniency in response to gender based violence is evident in many countries. See Penal Reform Intl., Women who kill in response to domestic violence: How do criminal justice systems respond, [https://www.penalreform.org/wpcontent/uploads/2016/04/Women who kill in response to domestic violence_Full report.pdf](https://www.penalreform.org/wpcontent/uploads/2016/04/Women%20who%20kill%20in%20response%20to%20domestic%20violence_Full_report.pdf), Apr. 2016.

³⁷ Ibid.



The Cornell Center on the Death Penalty Worldwide indicates that, in **Indonesia**, some courts have treated girls under the age of 18 as criminally responsible adults by virtue of their married status. One woman, “Susi”, currently on death row was only 17 when she was ordered by her older, abusive husband to kill a child. The court acknowledged the fact that she had repeatedly resisted her husband’s orders and only obeyed after he threatened her life. Nevertheless, the court sentenced her to death for premeditated murder. The maximum punishment for a juvenile offender is normally ten years imprisonment.³⁸

2.2. Mental and Intellectual Disabilities

According to the Cornell Center on the Death Penalty Worldwide, mental and intellectual disabilities are common among cases of women documented on death row, as is the case with many individuals who have received a death sentence.³⁹ While international law prohibits the execution of individuals with mental or intellectual disabilities,⁴⁰ in practice, states do not heed the prohibition.

Lisa Montgomery: The Only Woman on U.S. Federal Death Row Was Executed

Lisa Montgomery, a victim of incest, child prostitution and rape, was convicted of murder in 2007, for killing a pregnant woman and cutting the baby from her womb.

As a result of sexual violence, Lisa developed dissociative disorder and complex post-traumatic stress disorder, among other mental disorders. At trial, Lisa’s attorneys failed to present the full extent and impact of her childhood torture and sexual abuse. Federal prosecutors called the suffering Lisa endured the “abuse excuse” and instead focused on her failings as a mother, telling the jury that “[s]he didn’t cook, and [s]he didn’t clean.”

Lisa was put to death on 13 January 2021.⁴¹

2.3. Migrant Workers

Foreign nationals, particularly migrant workers employed as domestic workers, are sentenced to death in disproportionate numbers compared to the nationals of the country. This is the case particularly for nations like the **United Arab Emirates (UAE)** and **Saudi Arabia**. In the UAE as of 2018, “of the approximately 200 people on death row, only 19 are UAE nationals. There are nine women on death row, and eight are foreign nationals, most of whom are domestic workers.”⁴²

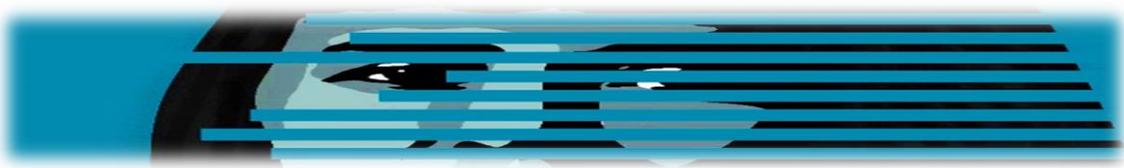
³⁸ LBH Masyarakat, Research Report to the Cornell Center on the Death Penalty Worldwide, Sep. 25, 2017.

³⁹ Center on the Death Penalty Worldwide, International Legal Issue: Mental Illness, <http://www.deathpenaltyworldwide.org/mental-illness.cfm>, Dec. 20, 2011.

⁴⁰ Ibid

⁴¹ Cornell Center on the Death Penalty Worldwide, Lisa Montgomery: A Victim of Incest, Child Prostitution and Rape Faces Execution, <https://deathpenaltyworldwide.org/lisa-montgomery-a-victim-of-incest-child-prostitution-and-rape-faces-execution/>, October 19, 2020.

⁴² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018, available at: bit.ly/MoreThanHerCrime pg 17



Many foreign domestic workers are unfamiliar with the language and the legal process, unable to afford a lawyer, unable to make themselves heard, and are often denied effective legal representation.⁴³

2.4. The Indigent

According to the U.N. Office of the High Commission of Human Rights, “If you are poor, the chances of being sentenced to death are immensely higher than if you are rich. There could be no greater indictment of the death penalty than the fact that in practice it is really a penalty reserved for people from lower socio-economic groups.”⁴⁴ Disadvantaged communities are easy targets for police.⁴⁵ Without resources, people living in poverty cannot retain skilled and effective lawyers to present an adequate defense. Like men, women in poor communities are more likely to be illiterate and unaware of their legal rights and thus less likely to participate in their own defense.⁴⁶ This leaves them vulnerable to discrimination, coercion, and exploitation, and heightens the risk of false confessions, which may be a determining factor in risking a death sentence.

2.5. Racial and Ethnic Minorities

In the **United States**, “[r]ace bias against defendants of color and in favor of white victims has a strong effect on who is capitally prosecuted, sentenced to death and executed.”⁴⁷ Black women are disproportionately sentenced to death, in contrast to white women. In the United States, although the population is 13.4% Black men and women,⁴⁸ Black women alone make up more than 25% of women sentenced to death.⁴⁹ In some states, that number is much higher. Of the 39 women sentenced to death in North Carolina, 61% were Black.⁵⁰ Additionally, Black people are regularly excluded from juries, a factor that may cause racial bias in sentencing.⁵¹ A study in North Carolina showed that qualified Black jurors were struck from juries at more than twice the rate of qualified white jurors. As of 2010, 20% of those on the state’s death row were sentenced to death by all-white juries.⁵²

⁴³ U.S. State Dept., United Arab Emirates 2015 Human Rights Report, pp. 4, 7, 8, <https://www.state.gov/documents/organization/253163.pdf>, 2015.

⁴⁴ U.N. Office of the High Commissioner for Human Rights, Death penalty disproportionately affects the poor, U.N. rights experts warn, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>, Oct. 10, 2017.

⁴⁵ *Ibid*

⁴⁶ U.N. Office on Drugs and Crime, Handbook on Women and Imprisonment, https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf, Mar. 2014.

⁴⁷ Death Penalty Information Center, Race, <https://deathpenaltyinfo.org/policy-issues/race>

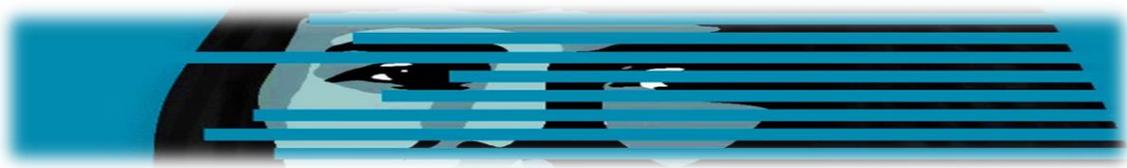
⁴⁸ <https://www.census.gov/quickfacts/fact/table/US/LFE046219>

⁴⁹ Kailey Morgan, *Even on Death Row, there’s no escape from racism and discrimination for Black women*, NC Policy Watch, <http://www.ncpolicywatch.com/2021/02/11/even-on-death-row-theres-no-escape-from-racism-and-discrimination-for-black-women/>, February 2, 2021

⁵⁰ *Ibid*.

⁵¹ *Miller-El v. Dretke*, 545 U.S. 231, 253 U.S. Supreme Ct., 2005.

⁵² Death Penalty Information Center, *Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty*, <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/enduring-injustice-the-persistence-of-racial-discrimination-in-the-u-s-death-penalty>, accessed April 20, 2021



3. INTERNATIONAL LEGAL PROTECTIONS FOR WOMEN IN DETENTION

3.1. Global and regional instruments

“National criminal justice systems and prisons, and to some extent international law itself, are largely designed by men and for men and often overlook women’s specific needs and vulnerabilities.”⁵³ Article 10 of the International Covenant on Civil and Political Rights (“ICCPR”) provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁵⁴

International and regional treaties focus on a woman’s role as mother and caregiver and exclude from execution women who fill those roles:

- **ICCPR** – prohibits the execution of pregnant women (Article 6);⁵⁵
- **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa** – prohibits the execution of mothers of infants and young children (Article 4);⁵⁶
- **African Charter on the Rights and Welfare of the Child** – prohibits the execution of mothers of infants and young children (Article 30(e));⁵⁷ and
- **Arab Charter on Human Rights** – prohibits the execution of a nursing mother within two years of delivery of a child (Article 12)⁵⁸

Until 2010, international protections for prisoners did not address the discrimination and stigma unique to women prisoners.⁵⁹ With the passage of the **United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders** (“Bangkok Rules”),

⁵³ Penal Reform Intl. and the Thailand Institute for Justice, Women in Detention: Putting the U.N. Bangkok Rules on women prisoners into practice, p. 12, https://www.penalreform.org/wp-content/uploads/2017/02/PRI_BR_Workbook_WEB_lowres-1.pdf, 2017.

⁵⁴ ICCPR, art. 10, 999 U.N.T.S. 171, Dec. 16, 1966. U.N. Human Rights Committee, General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), para. 3, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), Apr. 10, 1992.

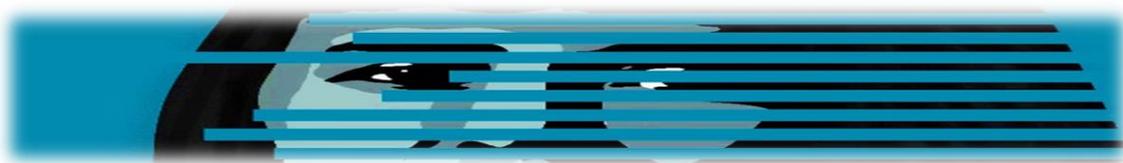
⁵⁵ ICCPR, art. 6(5), 999 U.N.T.S. 171, Dec. 16, 1966. Cornell Center on the Death Penalty Worldwide, International Legal Issue: Women, <http://www.deathpenaltyworldwide.org/women.cfm>, last accessed May 31, 2018.

⁵⁶ Prot. to the African Charter on Human and People's Rights on the Rights of Women in Africa, art. 4, OAU Doc. CAB/LEG/66.6, Jul. 11, 2003.

⁵⁷ African Charter on the Rights and Welfare of the Child, art. 30(e), OAU Doc. CAB/LEG/24.9/49, Jul. 11, 1990.

⁵⁸ Arab Charter on Human Rights, art. 12, Sep. 15, 1994.

⁵⁹ U.N. Office of the High Commissioner for Human Rights, Women and Detention, pp. 1–2, http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf, Sep. 2014.



existing safeguards⁶⁰ for prisoners were supplemented with gender-specific measures. The Bangkok Rules give guidance to policy makers, legislators, sentencing authorities and prison staff to reduce the incidence of imprisonment of women and to meet the specific needs of imprisoned women. The Bangkok Rules cover a variety of issues, including admission procedures, healthcare, humane treatment, search procedures, and the care of children who accompany their mothers into prison.⁶¹

Furthermore, the 2015 revisions to the **Standard Minimum Rules for the Treatment of Prisoners** (“Mandela Rules”)⁶² recognize women’s unique needs. The Mandela Rules have provisions on separated housing, supervision by female prison staff, hygiene, and banning restraints during labor and childbirth. The Mandela Rules also prohibit visiting restrictions as a way to discipline prisoners and specify that women prisoners must receive the benefit of this right on an equal basis with men.⁶³

3.2. Prison Conditions for Women on Death Row

Detention conditions for prisoners remains unacceptable, despite efforts by the United Nations to set minimum international standards. Conditions on death rows worldwide are harsh and sometimes endanger the lives and physical, moral and psychological integrity of detainees, to the point of amounting to torture or cruel, inhuman or degrading treatment⁶⁴. However, due to the nature of gender-based discrimination, in certain instances, conditions of incarceration for woman can be better than prison conditions for men, such as in **Pakistan**. “Experts attribute this difference not to government action, but rather to women’s housing units being less crowded and often benefiting from support and oversight from non-governmental organizations.”⁶⁵ Women on death row face additional burdens due to their unique needs, such as lack of gender-sensitive medical care; threats of violence; and restrictive visitation rights.

⁶⁰ ICCPR; CAT; United Nations Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; Basic Principles for the Treatment of Prisoners; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”); Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty; United Nations Standard Minimum Rules for Non-custodial Measures (“Tokyo Rules”).

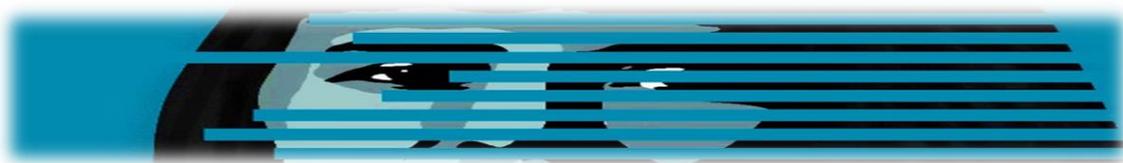
⁶¹ “UN Bangkok Rules on women offenders and prisoners; Short Guide”. Penal Reform International. <https://cdn.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>, Retrieved April 19, 2021.

⁶² UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, Rule 11, available at: <https://www.refworld.org/docid/5698a3a44.html> [accessed 20 April 2021]

⁶³ Ibid at Rule 70.

⁶⁴ Case law and several soft law instruments have emphasized this aspect. See for example: Manfred Nowak, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, 2009, <https://undocs.org/A/HRC/10/44>.

⁶⁵ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018, available at: bit.ly/MoreThanHerCrime pg 31



Separation. With few exceptions, men and women prisoners are detained in separate facilities or separate sections of prisons, in accordance with international norms.⁶⁶ Solitary confinement may be used either as disciplinary action or as a long-term arrangement for many death row prisoners despite limitations imposed by the Mandela Rules. However, solitary confinement may bring unique harms and dangers to women prisoners because of the disproportionately high rates of mental illness and trauma from past abuse suffered by women in prison.⁶⁷

Medical care. The availability of gender-specific health services is inadequate in many countries in prisons in general. Women in prison have reportedly given birth alone in prison in **Thailand** and **Myanmar**.⁶⁸ It is often challenging for women to gain access to sanitary pads or other menstruation products. Often women prisoners must make do with newspaper, tissue or pieces of blankets.⁶⁹ In **Zambia**, prisoners must wash menstrual cloths with inadequate or no detergent, since the prison does not supply soap.⁷⁰ The lack of menstruation care is compounded by the lack of privacy and washing and bathing facilities in most prisons. Moreover, sanitary napkins, when otherwise available are sometimes withheld as punishment.⁷¹

Violence. Female prisoners are exposed to a risk of gender –based violence while incarcerated, despite international standards requiring prisons to protect women from gender-based violence. For instance, “transactional relationships” can form in the states that allow male guards in female prisons, resulting in the trade of food or protection for sex.⁷² So called “cell trustees” in **China** administer physical punishment to other prisoners to exert their control.⁷³ In **Iran**, there have been reports of women being raped prior to their execution.⁷⁴

Restrictions on contact with family. Since many women serve as the primary caregiver to children and elderly family members in many countries that retain the death penalty, limitations on

⁶⁶ Penal Reform Intl., *Women in Prison: Incarcerated in a Man’s World*, Penal Reform Briefing, Nov. 3, 2008.

⁶⁷ For example, in England and Wales 25% of women (and 15% of men) in prison reported symptoms indicative of psychosis, compared to 4% within the general population; and 65% of women said they had mental health issues (compared with 42% of men). See: HM Chief Inspector of Prisons for England and Wales, *Annual Report 2016–17*. In the UK, 46% of women in prison report having suffered domestic violence, 53% report having experienced emotional, physical or sexual abuse during childhood, and 31% spent time in local authority care as a child. See: Ministry of Justice, *Prisoners’ childhood and family backgrounds*, www.gov.uk/government/publications/prisonerschildhood-and-family-backgrounds, Feb. 11, 2014.

⁶⁸ Danthong Breen, affiliated with Union of Civil Liberties, Interview with the Cornell Center on the Death Penalty Worldwide, Mar. 23, 2015. Anonymous Source, Interview with the Cornell Center on the Death Penalty Worldwide, Feb. 2016.

⁶⁹ Rosemary Barberet, *Women, Crime and Criminal Justice: A Global Enquiry*, p. 165, Routledge, 2014.

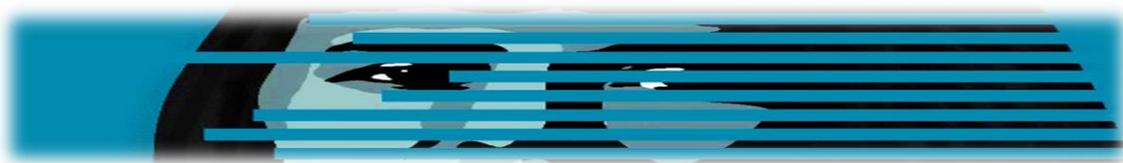
⁷⁰ Stephanie M. Topp et al., *Health and healthcare access among Zambia’s female prisoners: a health systems analysis*, *Intl. Journal for Equity in Health*, Vol.15: 157, Sept. 26, 2016.

⁷¹ Penal Reform Intl., *Women in Prison: Incarcerated in a Man’s World*, p.7, Penal Reform Briefing No. 3, 2008.

⁷² Johnson John Mbwambo, Legal and Human Rights Centre, Tanzania, Interview with the Cornell Center on the Death Penalty Worldwide, Jun. 14, 2017.

⁷³ Nicola Macbean, affiliated with the Rights Practice, Interview with the Cornell Center on the Death Penalty Worldwide, Mar. 10, 2015.

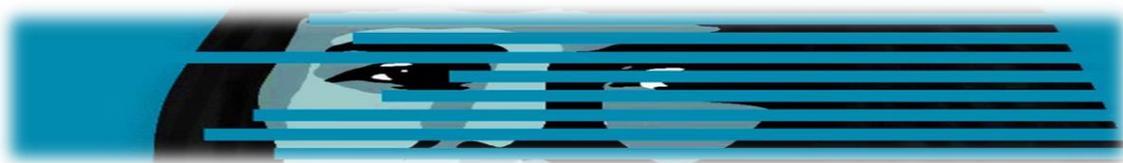
⁷⁴ Maryam Hosseinkhah, *The Execution of Women in Iranian Criminal Law: an Examination of the Impact of Gender on Laws Concerning Capital Punishment in the New Islamic Penal Code*, Iran Human Rights Documentation Center, <http://www.iranhrdc.org/english/publications/legal-commentary/1000000102-the-execution-of-women-in-iranian-criminal-law.html>, May 7, 2012.



visitation with these women is harmful to both the imprisoned and their families as illustrated by the report *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* published in 2018. The social stigma associated with incarceration and restrictive visitation results in many women on death row prisoners around the world suffering from a lack of family contact, which in turn contributes to higher levels of depression in women on death row. Additionally, in contravention of the Bangkok Rules, prison staff reportedly punish those on death row by restricting or withholding visitation.⁷⁵ According to information from the Cornell Center on the Death Penalty Worldwide, some prison systems allow detained female prisoners to keep their children with them, however this is rarely the case for women on death row. In **India**, when a female death row prisoner was initially allowed to keep her child with her, officials removed the child when he turned seven. As there was no family to take care of him, he was turned over to the foster system, where he had to adjust to life without his mother.⁷⁶

⁷⁵ Anonymous Source, Interview with the Cornell Center on the Death Penalty Worldwide, Mar. 20, 2015.

⁷⁶ National Law University Delhi Project 39A, Research Report to the Cornell Center on the Death Penalty Worldwide, Nov. 8, 2017.



GENERAL RECOMMENDATIONS

Below are recommendations for stakeholders to address issues affecting women on death row. Additional recommendations at the governmental and prosecutorial levels can also be encouraged in the remaining 54 retentionist countries.⁷⁷

1. Ensure equality by fully abolishing the death penalty, for all offences;
2. Pending full abolition:
 - a. Eliminate the death penalty for offences that do not meet the threshold of the “most serious crimes” under international law and standards;
 - b. Repeal provisions that allow for the mandatory imposition of the death penalty, which does not allow judges to consider the circumstances of the offence or of the defendant at sentencing;
 - c. Acknowledge the compounding forms of violence suffered by girls and women—including gender based violence and early and forced marriage – and review laws, criminal procedures and judicial practices, and implement policies and legislative reforms to protect against such abuses and prevent the disproportionate detention of women, such as so-called “moral/sexual crimes”, as well as to ensure that they take full account of women’s backgrounds, including histories of prior abuse and mental and intellectual disabilities;
 - d. Ensure the training of all those involved in the investigation, representation and prosecution of crimes involving women;
 - e. Ensure that all those facing the death penalty have access to free and effective legal counsel specialized in capital representation, and that are trained to recognize and bring forward claims of gender-specific defenses.
 - f. Increase the number of women involved in decision-making positions within legal systems, including judges, prosecutors, and court administrators;
 - g. Develop and implement programmes to prevent gender-based violence and discrimination, ensuring that access to justice, protection measures and legal, social, and medical services are designed and implemented in a manner that ensures inclusion and accessibility for all, including those particularly vulnerable.

⁷⁷ Amnesty Intl., April 21, 2021, <https://www.amnesty.org/en/latest/news/2021/04/death-penalty-in-2020-facts-and-figures/#:~:text=Amnesty%20International%20recorded%20that%201%2C477,be%20under%20sentence%20of%20death>