

World Day Against the Death Penalty – Gendered Torture on Death Row

A Factsheet

Introduction

In the United States, an estimated 54 women (eight trans women and forty-six cis) are on death row awaiting their executions.¹ Worldwide, the number of death-sentenced women jumps to approximately 800, although exact figures are unknown.² Many death-sentenced women throughout the world faced myriad forms of gender-based violence prior to prison, often amounting to torture. Furthermore, virtually all death-sentenced minors experienced gender-based violence (GBV), child marriage, and/or sexual abuse prior to their imprisonment.³ International courts have declared that rape is a form of torture, and other forms of sexual violence can rise to the level of torture.⁴ The torture that many women face prior to their incarceration is often replicated in the carceral system: prison conditions, death row itself, and a prison system designed for men exacerbate the effects of prior GBV, creating more extreme sentences and conditions amounting to torture.

Gendered Torture in Prison & on Death Row

Conditions of Confinement

The conditions of confinement in prison—isolating women and forcing them to rely on prison officials for basic necessities—mimics the torture many women faced prior to prison. For

example, one death-sentenced woman in the U.S., Lisa Montgomery, “had been raised in captivity, deprived of any control over her body and mind, and placed at the mercy of people who tortured her, sexually, physically, and emotionally.”⁵ Once in prison, Lisa was “confined in a constantly illuminated room in an ill-fitting smock without undergarments while being constantly surveilled by male guards...”⁶ These prison conditions mirrored the torture she experienced prior to prison when her stepfather built a special room in which he, and his male friends, could repeatedly and uninterruptedly rape her.

These traumatic prison conditions can be exacerbated by the presence of male prison guards and officials. In U.S. prisons, male officers regularly supervise female prisoners, creating an especially damaging loss of privacy.⁷ Given that women in prison have often experienced physical and sexual abuse prior to prison, the supervision by male prison guards can “reinforce feelings of vulnerability and can retraumatize women who have experienced past violence.”⁸ Furthermore, since prison officials wield “complete authority” over women in their prisons, it increases the danger of staff sexually abusing prisoners.⁹ One survey found that LGBTQ prisoners were over six times as likely to be sexually assaulted as the general prison population, placing transgender women at increased risk of traumatization.¹⁰

Solitary Confinement

Death row prisoners are frequently held in solitary confinement, either by virtue of their sentence, as a disciplinary sanction, or as the result of an institutional policy of applied gender discrimination. Solitary confinement is defined as the “confinement of prisoners for 22 hours or more a day without meaningful human contact.”¹¹ The UN Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”) proscribe indefinite and prolonged¹² solitary confinement as a form of torture or other cruel, inhuman or degrading treatment or punishment.¹³ The UN Special Rapporteur on Torture affirmed that prolonged solitary confinement amounts to torture due to the “severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion... rang[ing] from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.”¹⁴

Despite such international prohibitions, prolonged solitary confinement for both men and women has been reported in China, Indonesia, Jordan, India, and the United States.¹⁵ In the United States, one death-sentenced woman has languished in solitary confinement for more than 24 years because the prison system to which she was assigned had no death row for women. Prison officials chose to adopt a gendered policy which isolated and relegated her to solitary confinement, instead of integrating her with the regular prison population.

Although solitary confinement harms all individuals, evidence shows that it uniquely damages and endangers female prisoners.¹⁶ For instance, solitary confinement exacerbates underlying mental health conditions, which are more prevalent in female prisoners. Studies

show that nearly 70 percent of women in prison or jail have a history of mental health conditions—compared to approximately 35 percent of male prisoners.¹⁷ Furthermore, women suffer from serious mental illnesses at a higher rate than men.¹⁸ These mental health disparities place women at greater risk of psychological harm from solitary confinement, including “elevated levels of depression and anxiety, a higher propensity to suffer from hallucinations and paranoia, and a higher risk of self-harm and suicide.”¹⁹

Solitary confinement can also be particularly harmful to women who are pregnant or are mothers. Although the UN Rules for the Treatment of Women Offenders (the “Bangkok Rules”),²⁰ prohibit the solitary confinement of pregnant women or nursing women, the United States has still held pregnant women in solitary confinement.²¹ Solitary confinement not only harms pregnant or nursing women psychologically, but it reduces their ability to receive access to prenatal care and to request emergency medical care.²² Furthermore, women in solitary confinement may be restricted or unable to have visits with their children, increasing the psychological harm and creating “long-lasting repercussions on the parent-child relationship.”²³

Additionally, people of color are overrepresented in solitary confinement when compared to the general prison population.²⁴ Black women, in particular, are at a greater risk as they are placed in solitary confinement at disproportionately higher rates.²⁵ For example, one study found that white women constitute 59% of the total prison population, but only 45% of the solitary confinement population.²⁶ Meanwhile, Black women constitute only 23% of the total prison population, yet they represent 40% of the solitary confinement population.²⁷ These racial disparities place Black women at an

even higher risk of enduring the torture inherent in solitary confinement.

Transgender individuals also face an increased risk of torture through solitary confinement; prison officials use it as a form of “protective custody” or as a punishment for failure to adhere to stereotypical gender norms. For example, prison officials often place transgender women in solitary confinement after reports of rape or sexual violence in order to “protect” them.²⁸ Such confinement causes psychological distress due to the isolation, frequent strip searches, and lack of appropriate medical care associated with solitary confinement.²⁹ Moreover, the employment of solitary confinement as a protective tool can create a chilling effect on transgender individuals wanting to report rape or sexual violence.³⁰ When solitary confinement is used as a means of punishing transgender women for not adhering to stereotypical gender norms, it “undermines [their] dignity and their ability to live openly and safely as women.”³¹ Transgender individuals are already at an increased risk of physical and sexual violence as well as suicide which compounds the torture and psychological effects of solitary confinement.³²

Death Row Phenomenon

A death sentence itself—with knowledge of the impending execution—can amount to torture. Known as the “death row phenomenon,” it is described as the “mental anguish suffered by inmates awaiting execution due to protracted delays... and the harsh conditions of confinement on death row.”³³ The knowledge and anticipation of an impending execution adds to death-row prisoners’ mental anguish.³⁴ Death-sentenced individuals often languish for decades on death row, waiting for their execution while isolated from the general population and excluded from educational programs, employment opportunities, and visits from family members. This combination of factors can lead to a “sharp deterioration in a

prisoner’s mental and physical state, often making inmates suicidal.”³⁵

The UN Special Rapporteur on Torture has acknowledged the death row phenomenon, reporting that “poor prison conditions and lack of educational or recreational activities” coupled with the “uncertainty and anxiety created by the threat of death... [and] prolonged solitary confinement” can produce “severe mental trauma and physical suffering.”³⁶ Additionally, the European Court of Human Rights recognized the death row phenomenon and ruled that “the very long period of time spent on death row [in the United States] in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty” would create “a real risk” of violating the prohibition against torture or inhuman or degrading treatment or punishment.³⁷ Therefore, women on death row face torture and mental anguish merely by virtue of their sentence and the anticipation of their executions being carried out.

Profiles of Women on Death Row – Lisa Montgomery

The case of Lisa Montgomery underscores how prison conditions, solitary confinement, and death row phenomenon can exacerbate and replicate prior gender-based violence and mental health issues—ultimately amounting to torture.³⁸

From a young age, Lisa experienced horrific and frequent physical and sexual violence. Starting at age 13, Lisa was isolated in a specially-constructed room and raped by her stepfather and his friends two-three times a week. When she turned 15, her mother began selling her for sex in exchange for utilities and other services. While still in high school, Lisa’s mother and her boyfriend coerced Lisa into marrying her mother’s boyfriend’s adult son. Lisa’s adult

husband brutalized her throughout their marriage, physically abusing her and raping her. After Lisa gave birth to four children in less than five years, Lisa's mother forced her to be sterilized.

By the time Lisa turned 18, she had experienced nine out of ten adverse childhood experiences that can lead to trauma. Due to this trauma, Lisa developed Complex PTSD where she re-experienced her torture as if it were occurring in the present moment. Despite facing severe mental illness, Lisa never received any mental health treatment and no regular medical care. State agencies repeatedly failed to protect Lisa from this violence. Government agencies intervened to remove Lisa's older sister from the home due to physical and sexual abuse, but they left Lisa behind. When Lisa told her cousin, a police officer, about the rapes, he too failed to intervene.

In prison, when Lisa was notified of her execution date, she was transferred to USP Terre Haute—an all-male prison—placed on death watch, and forced to endure conditions that no other death-row male prisoner had to face. For the first two weeks, Lisa was not allowed to wear any undergarments. The tear-resistant “safety smock” she was forced to wear, left her breasts, pubic area, and genitalia exposed when she crouched or squatted. None of the men at USP Terre Haute were forced to wear a safety smock, nor were they deprived of their undergarments. When Lisa was finally given underwear, the male guards instructed her to “be a good girl now.” As a survivor of repeated rapes, this instruction reminded her of her mother and stepfather forcing her to have sex with strange men.

As an all-male prison, USP Terre Haute has hundreds of male prison guards. These men could monitor Lisa in her cell and watch while

she showered. Remaining in full-view of male prison guards, further compounded the trauma Lisa experienced when she was forced to remain in a small room where she was repeatedly raped. For the first two weeks at USP Terre Haute, Lisa was denied access to all reading material. She was then permitted to have one book, but all of her other writing, legal, and personal materials were removed. None of the men on death row at USP Terre Haute were denied access to reading, writing, and personal materials.

Furthermore, prison officials constantly illuminated Lisa's cell, contributing to her sleep deprivation and rapid cognitive decline. Lisa was also denied access to the outdoors and exercise, her physician-prescribed CPAP machine, and prescription eyeglasses. None of the men on death row at USP Terre Haute were forced to endure these conditions. Lisa's case illustrates how the prior GBV and torture she experienced was replicated in prison, where male officials wielded control over her daily life and basic necessities and subjected her to humiliating and degrading treatment.

Conclusion

Ultimately, gendered prison conditions and solitary confinement on death row can amount to torture for many women. The harm death-sentenced women face in prison is further compounded by the torture many endured prior to incarceration through rape and other forms of GBV. Further, the death sentence itself can exacerbate the already present trauma through death row phenomenon. Black women, transgender women, and pregnant or nursing mothers are at particular risk of torture. Prison officials should take measures to reduce the gendered conditions and torture that many women face on death row.

¹ Cornell Center on the Death Penalty Worldwide

² The Death Penalty Project, “World Day Against the Death Penalty – Women and the Death Penalty,” (Oct. 10, 2021), available at <https://deathpenaltyproject.org/world-day-against-the-death-penalty-women-and-the-death-penalty/>.

³ Cornell Center on the Death Penalty Worldwide, “Judged For More than Her Crime,” pg. 15 (Sept. 2018), available at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴ See ICTY Court, *Prosecutor v. Delic et al.*, Judgment, Case No. IT-96-21-T, 16 November 1998 (holding rape to be an act of torture); Inter-American Court, *Raquel Martín de Mejía v. Perú*, Case 10.970, Inter-Am.C.H.R., Report No. 5/96, OEA/Ser.L/V/II.91 Doc. 7, at 157, 1996 (holding that rape is an act of torture); ECHR, *Case of Aydin v. Turkey*, 25 ECHR 251, 1988 (holding that rape violates the ECHR’s prohibition against torture); see also *Prosecutor v. Jean Paul Akayesu*, Amended Indictment, ICTR-96-4-1, para. 12 (holding that rape and sexual violence can constitute genocide).

⁵ Lisa Montgomery Complaint, pg. 10.

⁶ Lisa Montgomery Complaint, pg. 19.

⁷ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

⁸ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 10 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

⁹ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 10 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

¹⁰ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 10 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

¹¹ Mandela Rules, Rule 44, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

¹² The Mandela Rules define prolonged solitary confinement as “solitary confinement for a time period in excess of 15 consecutive days.” See Mandela Rules, Rule 44, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

¹³ Mandela Rules, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

¹⁴ OHCHR, “United States Prolonged Solitary Confinement Amounts to Psychological Torture,” (Feb. 2020) available at <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

¹⁵ Cornell Center on the Death Penalty Worldwide, “Prison Conditions for Women Facing the Death Penalty Factsheet,” pg. 3 (Oct. 1, 2018), available at <https://deathpenaltyworldwide.org/publication/prison-conditions-for-women-facing-the-death-penalty-a-factsheet/>.

¹⁶ Cornell Center on the Death Penalty Worldwide, “Prison Conditions for Women Facing the Death Penalty Factsheet,” pg. 3 (Oct. 1, 2018), available at <https://deathpenaltyworldwide.org/publication/prison-conditions-for-women-facing-the-death-penalty-a-factsheet/>; ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

¹⁷ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 8 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf; <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf> pg. 4

¹⁸ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 8 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf; <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf> pg. 4

¹⁹ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

²⁰ UN Rules for the Treatment of Women Offenders (“The Bangkok Rules”), adopted March 16, 2011, available at https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

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- ²¹ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 9 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
- ²² ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 9 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
- ²³ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pg. 11 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf; Prison Conditions for Women Facing the Death Penalty Factsheet, pg. 3
- ²⁴ Juleyka Lantigua-Williams, “The Link Between Race and Solitary Confinement,” THE ATLANTIC (Dec. 5, 2016), available at <https://www.theatlantic.com/politics/archive/2016/12/race-solitary-confinement/509456/>.
- ²⁵ “Solitary Confinement is Torture. U.S. Prisons Should Stop Using It.” WASHINGTON POST (Sept. 6, 2022), available at <https://www.washingtonpost.com/opinions/2022/09/06/solitary-confinement-torture-prison/>.
- ²⁶ Prison Policy Initiative, “Visualizing the Racial Disparities in Mass Incarceration,” (2018), available at <https://www.prisonpolicy.org/graphs/solitarybyracesex2018.html>.
- ²⁷ Prison Policy Initiative, “Visualizing the Racial Disparities in Mass Incarceration,” (2018), available at <https://www.prisonpolicy.org/graphs/solitarybyracesex2018.html>.
- ²⁸ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pgs. 13-14 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
- ²⁹ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pgs. 13-14 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
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- ³¹ ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pgs. 13-14 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
- ³² ACLU, “Still Worse than Second-Class – Solitary Confinement of Women in the United States,” pgs. 13-14 (2019), available at https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.
- ³³ Anne Mori Kobayashi, International and Domestic Approaches to Constitutional Protections of Individual Rights: Reconciling the Soering and Kindler Decisions, 34 AM. CRIM. L. REV. 225, 229 n.24 (1996).
- ³⁴ Nkem Adeleye, “The Death Row Phenomenon: A Prohibition Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment,” SAN DIEGO L. J. (2021), available at <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=3426&context=sdlr>; Reprieve, “Death Row Phenomenon: The Psychological Impact of Living in the Shadow of Execution,” (Oc. 11, 2016), available at <https://reprieve.org/uk/2016/10/11/death-row-phenomenon-psychological-impact-shadow-execution/>.
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- ³⁶ OHCHR, “Death Penalty Increasingly Viewed as Torture,” (Oct. 2012), available at <https://www.ohchr.org/fr/press-releases/2012/10/death-penalty-increasingly-viewed-torture-un-special-rapporteur-finds>.
- ³⁷ (1989) 11 EHRR 439, available at <https://www.refworld.org/cases,ECHR,3ae6b6fec.html>.
- ³⁸ The following facts are taken from the complaint filed on behalf of Lisa Montgomery in the U.S. District Court for the District of Columbia.