



# Judged for More Than Her Crime

*A Global Overview of Women Facing the Death Penalty*

September 2018

THE CORNELL CENTER ON THE DEATH PENALTY WORLDWIDE  
A Report of the Alice Project



Cornell Law School

COVER PHOTOGRAPH: Sleeping conditions for women in a provincial prison in Thailand in 2015. Overcrowding means that women on death row mix with the general population, and women take turns sleeping. Photo credit Kulapa Vajanasara, Women Prison Reform and Relevant Justice Systems, a research project by the Thai Association of Population and Social Researchers at Mahidol University.

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## **THE CORNELL CENTER ON THE DEATH PENALTY**

**WORLDWIDE** aims to bridge critical gaps in research and advocacy around the death penalty. The Center provides comprehensive, transparent data on the death penalty laws and practices of all countries and territories that retain the death penalty. It publishes reports and manuals on issues of practical relevance to defense lawyers, governments, courts, and organizations grappling with questions relating to the application of the death penalty, particularly in the global south. It also engages in targeted litigation and advocacy focusing on the implementation of fair trial standards and the rights of those who come into conflict with the law, including juveniles, women, and individuals with intellectual disabilities and mental illnesses. Finally, it provides training through the Makwanyane Institute to a cadre of competitively chosen Fellows, who undergo intensive capital defense training with the intent to return home and share their knowledge with other capital defenders around the globe. More information is available at **[www.deathpenaltyworldwide.org](http://www.deathpenaltyworldwide.org)**.

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**IN INDIA:** Project 39A in National Law University, Delhi undertakes research on various aspects of the criminal justice system in India and also provides *pro bono* legal representation to under-trial prisoners and those on death row. It is formally a part of NLU Delhi and draws inspiration from Article 39-A in the Constitution of India on equal justice and equal opportunity. Project 39A currently undertakes research on forensics, torture, legal aid, forensic psychiatry, sentencing and the death penalty. NLU Delhi started its engagement with the death penalty through the Death Penalty Research Project and the Centre on the Death Penalty between 2013-18, which has subsequently transitioned into Project 39A for a broader engagement with the criminal justice system in India.

**IN INDONESIA:** LBH Masyarakat is a not-for-profit non-governmental organization, based in Jakarta, that provides free legal services for the poor and victims of human rights abuses, including people facing the death penalty or execution; undertakes community legal empowerment for

marginalized groups; and advocates for law reform and human rights protection through campaigns, strategic litigation, policy advocacy, research and analysis.

**IN JORDAN:** Iyad Alqaisi is a practicing lawyer based in Amman and the director of Justice Clinic, an NGO focused on legal reforms. He is a member of the Jordan Bar Association and the Palestinian Bar Association. An Open Society Foundation Rule of Law Fellow, he holds an LL.M from Syracuse University, New York and an LL.B from Jordan's Yarmouk University.

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## Foreword



## Executive Summary

We estimate that at least 500 women are currently on death rows around the world. While exact figures are impossible to obtain, we further estimate that over 100 women have been executed in the last ten years—and potentially hundreds more. The number of women facing execution is not dramatically different from the number of juveniles currently on death row, but the latter have received a great deal more attention from international human rights bodies, national courts, scholars, and advocates.

This report aims to shed light on this much-neglected population. Few researchers have sought to obtain information about the crimes for which women have been sentenced to death, the circumstances of their lives before their convictions, and the conditions under which they are detained on death row. As a result, there is little empirical data about women on death row, which impedes advocates from understanding patterns in capital sentencing and the operation of gender bias in the criminal legal system. To the extent that scholars have focused on women on death row, they have concluded that they are beneficiaries of gender bias that operates in their favor. While it is undeniable that women are protected from execution under certain circumstances (particularly mothers of infants and young children) and that women sometimes benefit from more lenient sentencing, those that *are* sentenced to death are subjected to multiple forms of gender bias.

Most women have been sentenced to death for the crime of murder, often in relation to the killing of family members in a context of gender-based violence. Others have been sentenced to death for drug offenses, terrorism, adultery, witchcraft, and blasphemy, among other offenses. Although they represent a tiny minority of all prisoners sentenced to death, their cases are emblematic of systemic failings in the application of capital punishment.

Women in conflict with the law are particularly vulnerable to abuse and other rights violations, either at the police station, during trial, or while incarcerated. Women are more likely than men to be illiterate, which affects their ability to understand and participate in their own defense. For example, of the 12 women on India's death row in 2015, six have never attended school. Illiteracy also increases their vulnerability to coercion,

heightening the risk of false confessions. In certain countries, particularly in the Gulf states, most death-sentenced women are foreign migrant workers who are subject to discriminatory treatment.

Mental illness and intellectual disability are common among women facing the death penalty. In Pakistan, Kanizan Bibi has been on death row since 1989, when she was only 16-years-old. Diagnosed with paranoid schizophrenia, she cannot care for herself in the most basic ways and has lost all awareness of her surroundings. Although she is now confined in a psychiatric hospital, she remains under sentence of death.

Many women enter prison as long-term survivors of gender-based violence and harsh socio-economic deprivation. We have documented several cases of women convicted of crimes committed while they were minors, often in the context of child marriage. These factors receive little attention from lawyers and courts. In many death penalty jurisdictions, gender-based violence is not considered at sentencing. Few lawyers present such evidence, and even where they do, the courts often discount it. In mandatory death penalty jurisdictions, a woman's prior history as a survivor of physical or sexual abuse is simply irrelevant, since the death penalty is automatically imposed for death-eligible offenses without consideration of the offender's background or the circumstances of the crime.

Our research also indicates that women who are seen as violating entrenched norms of gender behavior are more likely to receive the death penalty. In several cases documented in this report, women facing the death penalty have been cast as the "femme fatale," the "child murderer," or the "witch." The case of Brenda Andrew in the United States is illustrative. In her capital trial, the prosecution aired details of her sexual history under the guise of establishing her motive to kill her husband. The jury was allowed to hear about Brenda's alleged extra-marital affairs from years before the murder, as well as details about outfits she wore. The trial court also permitted the prosecutor to show the underwear found in the suitcase in her possession after she fled to Mexico, because it showed that she was not behaving as "a grieving widow, but as a free fugitive living large on a Mexico beach." As one Justice of the Court of Criminal Appeals of Oklahoma noted, Brenda was put on trial not only for the murder of her husband but for being "a bad wife, a bad mother, and a bad woman."

Death row conditions around the world are harsh and at times life-threatening for both men and women. In China, for example, all death row inmates, including women, are shackled at all times by their hands and feet. Women face certain deprivations, however, that do not affect the male population to the same extent. Some death sentenced women must also care for infants or young children who are incarcerated alongside them. Meriam Ibrahim, sentenced to death in Sudan for apostasy in 2014, was shackled to heavy chains in prison while eight months pregnant and caring for a young child. In Thailand and Myanmar, inmates have reportedly given birth alone in prison. In many countries, it is challenging or impossible for women to access sanitary pads or other menstruation products. In Zambia, for example, women must make do with rags that they struggle to clean without soap.

The social stigma associated with women who are convicted and imprisoned, paired in some cases with restrictive family and child visitation rules, means that many female death row inmates around the world suffer an enduring lack of family contact, contributing to the high levels of depression suffered by women prisoners. Women on death row may also be denied access to occupational training and educational programs. For instance, the general female prison population in Thailand has access to work programs, but death row inmates do not. One woman in Ghana explained, after being denied educational opportunities while on death row: “I don’t do anything. I sweep and I wait.”

Our country profiles aim to provide a snapshot of women facing the death penalty in several major regions of the world. The stories of women on death row provide anecdotal evidence of the particular forms of oppression and inhumane treatment documented in this report. It is our hope that this initial publication, the first of its kind, will inspire the international community to pay greater attention to the troubling plight of women on death row worldwide.

# I. Introduction: Women on Death Row, Invisible Subjects of Gender Discrimination

When we began this research, we were surprised by the dearth of information available about female death row populations around the world. Although a number of scholars have examined the causes, conditions, and consequences of women's incarceration more broadly, few have focused specifically on women who have been condemned to death.<sup>1</sup> As a result, there is little empirical data about the crimes for which women have been sentenced to death, the circumstances of their lives before their convictions, and the conditions under which they are detained on death row. This lack of research interest, we believe, is in part attributable to the relatively small numbers of women on death row. We were nonetheless convinced, based on our own preliminary research, that the cases of women condemned to death would reveal significant patterns of arbitrariness and discrimination in the application of the death penalty. Our research has implications beyond the small population of women facing death row. The factors we identify as affecting why and how women are sentenced to death are relevant to all women in conflict with the law. We hope that this report illuminates how gender and poverty operate intersectionally to create uniquely precarious conditions for women facing capital sentences specifically, and female defendants more broadly.

Faced with the absence of comparative research on this topic, we spent three years assembling case studies and reviewing anecdotal information from human rights reports. We interviewed dozens of lawyers, activists, and researchers who had first-hand knowledge of cases involving women who had been condemned to death. Based on our research, we can confirm that gender-based discrimination is pervasive in all capital punishment systems that we studied.

We define gender-based discrimination as the unequal or unfair treatment of an individual on the basis of gender. Gender-based discrimination affects all aspects of social life, and our research has confirmed that capital trials aggravate pre-existing gender-based inequality. At the same time, it has revealed that gender-based discrimination in capital trials is a complex issue because there is often more than one form of bias at play, and

these biases may work both to the benefit and the detriment of female capital defendants. The root of these contradictions is the tendency of actors in the criminal justice system to see women as victims and survivors rather than as perpetrators of crime. The stereotype of women as peaceful caregivers has benefitted many women who have received reduced sentences as a result. At the same time, women who are seen as violating entrenched norms of gender behavior may be sentenced more harshly. Women tend to receive lesser sentences than men when perceived as victims that conform with their assigned roles in society—the “caring mother,” the “naïve girl,” or the “hysterical woman.” In contrast, women tend to receive harsher sentences when perceived as deviating from those roles—the “femme fatale,” the “child murderer,” or the “witch.”<sup>2</sup>

Women tend to receive lesser sentences than men when perceived as victims that conform with their assigned roles in society—the “caring mother,” the “naïve girl,” or the “hysterical woman.” In contrast, women tend to receive harsher sentences when perceived as deviating from those roles—the “femme fatale,” the “child murderer,” or the “witch.”

Domestic legal prohibitions on executing women reflect this victim/offender binary. This is particularly true of countries that have outlawed the execution of all women on the basis of their gender alone. Currently, three countries that retain the death penalty in their legislation prohibit its application to all women, regardless of family status, age, or offense: Belarus, Tajikistan, and Zimbabwe. Discerning the rationale for the exclusion of women in these three countries is a matter of some conjecture, as there was little, if any, public debate surrounding the introduction of these prohibitions. When Belarus's new criminal code of 1999, the first since independence, excluded all women from the death penalty, there was “no real debate” on the issue. The provision seems above all to have codified an existing practice: only three women are known to have been executed in Belarus since 1953.<sup>3</sup>

In Tajikistan and Zimbabwe, domestic law originally prohibited the execution only of pregnant women (an exclusion required by international law). The extension of

the ban to all women was a strategy for incrementally reducing the use of capital punishment, rather than the result of a gendered analysis. In Zimbabwe, the 2013 constitution banned the execution of women because the drafters did not think that full abolition was politically tenable. Excluding women was an achievable objective because few women are executed and executing women makes the public uncomfortable. It was also a potential Trojan horse for abolition in light of the constitution's equality provisions. Indeed, a constitutional challenge to the death penalty on equality grounds is currently underway.<sup>4</sup> In Tajikistan, as in Mongolia, which excluded women from execution until it abolished the death penalty in 2015, the exemption for women "did not entail any kind of discrimination on the grounds of sex; it existed because...it was considered...a significant step towards its complete abolition."<sup>5</sup>

Other legal prohibitions on executing women emphasize the social importance of their roles as mothers. Pregnant women are universally excluded from the use of the death penalty, although in some countries they may be executed after giving birth.<sup>6</sup> Altogether, at least fifty countries have adopted legislation prohibiting the execution of mothers with young children or are party to at least one international treaty that prohibits the practice.<sup>7</sup> Article 4(2)(g) of the Protocol on the Rights of Women to the African Charter on Human and Peoples' Rights provides that nursing mothers may not be executed, but refrains from specifying an age at which a child is presumed to be weaned. The Arab Charter on Human Rights prohibits the imposition of the death penalty on a nursing mother within two years from the date on which she gave birth. These provisions fail to protect new mothers who cannot or choose not to nurse their babies.

Limitations on executing pregnant women, or women with young children, embody important human rights norms, including the fundamental principle of prioritizing the best interests of the child, and the authors of this report fully support them. Nevertheless, it is worth reflecting on the fact that these norms also signal that the quality for which women deserve clemency is their connection to motherhood. Such reasoning leaves women who do not conform to this role—women who have no children, and especially women whose offenses result in harm to children—with default narratives of deviance and place them at a heightened disadvantage in capital trials.

Women who are eligible for the death penalty under domestic and international law face gender bias at multiple levels. Our research has revealed a number of cases of women whose capital trials were permeated with candidly sexist language. In India, for instance, a woman accused with her lover of killing her husband was characterized by the court as the "kind of woman" who brings "shame" upon her family, village, and society and who represents a threat to women and men alike. Referring to the woman's extramarital affair, the court commented that "a lady of such character deserves no leniency."<sup>8</sup> A Pakistani court, in refusing a woman's bail application in a drug smuggling case, observed: "Had the accused been concerned about her suckling baby, she would not have resorted to indulge in such activity which had afflicted the whole society and especially the younger generation."<sup>9</sup> In a case involving a woman convicted of killing several members of her family, the Supreme Court of India stated that as a daughter, she had violated her gender role as "the caregiver" for her parents.<sup>10</sup> The Court further observed, "[the daughter] is a caregiver and a supporter, a gentle hand and a responsible voice, an embodiment of cherished values of our society and in whom a parent places blind faith and trust."<sup>11</sup> In all of these cases, courts chose to arrange the evidence before them in the shape of familiar narratives about women, rather than grapple with the complexities of a human being who happened to be a woman.

In India, for instance, a woman accused with her lover of killing her husband was characterized by the court as the "kind of woman" who brings "shame" upon her family, village, and society and who represents a threat to women and men alike.

In other cases, the evidence of gender bias is more subtle, but nonetheless unmistakable. One lawyer in Iran noted that courts trying women capital defendants judge their whole lives, and not just the offense with which they are charged (particularly in cases where the defendant is accused of killing her spouse).<sup>12</sup>

At the investigation stage, police officers' gender biases and stereotypical assumptions about femininity influence their behavior and decision-making regarding female offenders. For instance, Pakistani police officers

reflexively target wives as the prime suspects in their husbands' murders if no other suspect is immediately apparent.<sup>13</sup> Our research has also revealed the tendency to arrest women along with their husbands or other male figures in their lives. In India, at least nine out of 12 women on death row were charged with one male co-defendant and at least 6 of these men were their intimate partners.<sup>14</sup> In a minority of death row cases in India a woman was the sole accused.<sup>15</sup> Moreover, in one instance, the female death row prisoner reported that her trial lawyer would only meet with her husband regarding their case, and then her husband would explain to her the case details.<sup>16</sup> Seven out of nine cases of women on death row in Indonesia also involved male co-defendants, usually an intimate partner.<sup>17</sup> Little attention has been devoted to the question of whether some of these women may face a capital sentence because of their association with their male co-defendants, potentially jeopardizing their presumption of innocence and entitlement to an individualized judicial process.

Biased treatment by law enforcement exacerbates the pre-existing vulnerabilities of many female offenders, especially those from rural areas. Lack of education prevents many women from being able to read and interpret legal documents, or to be fully engaged in their own defense.<sup>18</sup> Additionally, women frequently lack money or property of their own, which impedes their ability to retain qualified legal counsel. Lack of economic resources also makes it practically impossible for many women to compensate the victim's family in legal systems where financial restitution can lead to a reduction in their sentence.<sup>19</sup>

At sentencing, gender bias exists not simply when gendered stereotypes are mobilized to establish culpability, but also when gender is simply ignored in the courtroom. Women defendants suffer from harsher sentences when there is no recognition of how gender and patriarchy affected their criminal conduct. Fundamental concepts in criminal law, such as intent and volition, often take for granted the actor's agency in determining their conduct. But survivors of domestic violence, for example, do not enjoy such agency. Trauma and the threat of violence influence the defendant's ability to escape the peril in which they find themselves.

One of the most striking instances of gender bias at sentencing affects female defendants who are survivors of domestic abuse. In mandatory death penalty jurisdictions,

such as Tanzania, gender-based violence is only relevant where the defendant can proffer a self-defense claim. The legal doctrine of self-defense, however, is limited to lethal force deemed "reasonable" and "necessary" to protect life or limb from imminent threat.<sup>20</sup> A woman who kills her batterer while he is asleep, for example, even after a lifetime of domestic violence, would not necessarily be able to invoke this doctrine.<sup>21</sup>

One of the most striking instances of gender bias at sentencing affects female defendants who are survivors of domestic abuse.

Even in countries where judges exercise discretion in applying the death penalty, courts do not consistently take note of abuse, gender-based violence, and trauma when making decisions about the appropriate sentence. As an initial matter, lawyers in most countries lack the resources and training to document and explain gender-based violence to the court.<sup>22</sup> But even where advocates are able to gather such evidence to present to the court at sentencing, courts may disregard it.<sup>23</sup>

In capital trials, it is often men who tell the stories of women facing the death penalty. In most retentionist countries, women are poorly represented in the ranks of police officers, lawyers, and judges. The 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. The legal system is imbued with patriarchal norms, and our research indicates that this inherent bias has contributed to the wrongful convictions and death sentences of women throughout the world.



## II. Methodology

This project relied heavily upon partnerships with country experts, including practicing capital defense lawyers as well as activists, academics, and organizations working on issues related to the death penalty, women's rights, and women's imprisonment. These partners draw their knowledge from their work with a wide range of stakeholders in the criminal justice system, including defense lawyers, civil society, prison administrators, and prisoners under sentence of death.

The researchers conducted extensive desk research on the myriad issues facing women on death row around the world, including by collecting general and country-specific reports, journal articles, statistical data, reports to international human rights bodies, case files, country-specific legislation and jurisprudence, and newspaper reports.

Further, researchers conducted interviews with country experts from Cameroon, China, India, Iran, Japan, Jordan, Malawi, Mauritania, Morocco, Nigeria, Pakistan, Thailand, United Arab Emirates, Uganda, Zambia, and Zimbabwe.

The Center partnered with experts/organizations in Indonesia, India, Jordan, and Pakistan, who conducted in-depth country investigations and produced detailed reports based on their research.

Where possible, this report drew upon information specific to women on death row. Where such information was not available, the report relies on information about women prisoners and defendants more broadly. As a last resort, the report refers to the experiences and conditions of death row prisoners, who are mostly male. We have indicated in the text that follows when we rely on information regarding defendants or prisoners who are not women on death row.

## III. Women Facing the Death Penalty around the World: An Understudied Population

Gender discrimination in capital criminal proceedings is an understudied phenomenon, in part because there are relatively few women on death row. Although exact figures are difficult to find and, in some countries, impossible to obtain, our research suggests that women represent less than 5% of the world's death row population and less than 5% of the world's executions. Nonetheless, we estimate that at least 500 women are currently on death rows around the world.

### A. SENTENCES

In **Asia**, where most of the world's executions are carried out, women make up a small fraction of those on death row. For instance, women represent 5.7% of death row prisoners in Japan (eight women),<sup>24</sup> and 2.3% in Taiwan (one woman).<sup>25</sup> Estimates of the percentage of women on death row in China range from 1% to 5%. Given the size of China's death row population, these figures represent dozens, if not hundreds of women.<sup>26</sup> Women make up 3% of all death row prisoners in India (12 women),<sup>27</sup> and 2.5% in Bangladesh (37 women).<sup>28</sup> As of 2017, there were 33 women on death row in Pakistan<sup>29</sup> out of around 5,000 prisoners for whom data is available,<sup>30</sup> or roughly 0.6%. There were nine women on death row in Indonesia whose sentences had been finalized as of September 2017, or about 6% of all death row prisoners with finalized sentences.<sup>31</sup> By contrast, women make up 18% of the death row population in Thailand (94 women).<sup>32</sup>

The proportion of death-sentenced women is even smaller in largely *de facto* abolitionist **Africa**. Female inmates represent approximately 15% of the death row in Malawi (four women),<sup>33</sup> 4% in Uganda (11 women),<sup>34</sup> 2.2% in Nigeria (32 women),<sup>35</sup> 3.1% in Ghana (five women),<sup>36</sup> 1.8% in Mauritania (one woman),<sup>37</sup> and 1% in Zambia (two women).<sup>38</sup> In 2016, Kenyan President Uhuru Kenyatta commuted the sentences of all prisoners on death row—2,655 men and 92 women—into life sentences.<sup>39</sup> Since then, more people have been sentenced to death in Kenya but it is unclear how many of these are women.<sup>40</sup>



The proportion of women on death row is more variable in the **Middle East**, the region with the world's highest per capita execution rate. As of August 2014, there were 25 women on death row in Iraq out of 1,724 death-sentenced prisoners, or about 1.4%.<sup>41</sup> In recent years, however, the death sentence has been applied to women in Iraq with alarming frequency for alleged ties to the so-called "Islamic State" or ISIS.<sup>42</sup> Currently, 560 women are awaiting trial in detention on charges of aiding or being members of ISIS.<sup>43</sup>

In the United Arab Emirates, as of June 2018 there were nine women under sentence of death out of around 200 death row inmates.<sup>44</sup> All but one were foreign nationals,<sup>45</sup> and most of these (if not all) were migrant workers.<sup>46</sup> In Jordan, there are 16 women on death row out of 120 death row inmates (13%).<sup>47</sup> The number of death-sentenced women in Saudi Arabia is unknown. Nevertheless, Saudi Arabia has executed at least nine women out of the hundreds of prisoners it has put to death since 2015.<sup>48</sup> Iranian human rights lawyers estimate that there are dozens of women on death row in Iran and in 2017, at least ten women were executed.<sup>49</sup>

In the **Americas**, the only state that has carried out executions in the past few years is the United States, where there were 54 women on death row as of October 2017, representing 1.93% of the total death row population.<sup>50</sup> Since 1973, 181 women have been sentenced to death in the United States, which constitutes about 2% of all death sentences there.<sup>51</sup> There are very few women on death row in the Caribbean.

## B. EXECUTIONS

Women are also executed in significantly smaller numbers than men. Some retentionist death penalty states have executed few or no women in their history. India, for instance, has not executed a woman in recent times.<sup>52</sup> Thailand has executed three women since 1942.<sup>53</sup>

The countries that execute the greatest number of women are the world's two leading executioners: China, which in recent years has executed an estimated 20 to 100 women a year (1% to 5% of its total executions), and Iran, which has executed at least 38 women in the past three years (1.8% of its executions, on average).<sup>54</sup> The next three states with the highest number of executions have executed less than five women a year in the last few years. Iraq executed 17 women between 2004 and 2014, around

2.5% of its total executions.<sup>55</sup> Saudi Arabia has executed less than five women a year in the past five years, representing around 2.2% of its executions. In the United States, 16 women have been executed since the death penalty was reinstated by the Supreme Court in 1976. This represents about 1% of its total number of executions. The United States executed two women in 2014 and one in 2015.<sup>56</sup>

Women have also been executed in recent years in Egypt,<sup>57</sup> Kuwait,<sup>58</sup> Jordan,<sup>59</sup> North Korea,<sup>60</sup> Afghanistan,<sup>61</sup> Indonesia,<sup>62</sup> Gambia,<sup>63</sup> and Somalia.<sup>64</sup>

## IV. Crimes for Which Women Are Sentenced to Death

Although women are sentenced to death and executed at lower rates than men overall, they are sentenced to death at higher rates for certain categories of crimes, such as sorcery and adultery.<sup>65</sup> In addition, the facts of the crimes for which women are condemned to death reveal patterns linked to gender.

### A. WOMEN ON DEATH ROW FOR MURDER

Available data indicates that most women on death row have been sentenced to death for the crime of murder. Many of these crimes involve murders of close family members in a context of gender-based violence. In China, which executes the most women in the world, one expert estimated that a significant number, possibly up to half, of the women sentenced to death for murder had killed family members.<sup>66</sup> Yemen's Interior Ministry reported that of the 50 women arrested for killing their husbands in 2012, most of them had been motivated by domestic violence and gender inequality.<sup>67</sup> While we do not know how many of these women were eventually sentenced to death, murder in Yemen carries the mandatory death penalty unless the victim's family pardons the offender.

We found reports of women sentenced to death for killing their abusers in Taiwan, Uganda, Morocco, Jordan, Malawi, Nigeria, and China.

Of the 16 women who were on death row in India as of September 2017, six were sentenced to death for the murder of their immediate or extended family.<sup>68</sup> In two cases, the women's families had opposed romantic relationships with men they judged unsuitable.<sup>69</sup> A third woman was sentenced to death for killing her husband; her lover, who was also charged in the crime, received a life sentence.<sup>70</sup>

In Iran, information gathered from the Iran Human Rights Documentation Center indicates that most women on death row were sentenced to death for the murder of their abusive husbands.<sup>71</sup> In many cases, these women were married at a young age, without the right to divorce their assailants.<sup>72</sup> We found reports of women sentenced to death for killing their abusers in Taiwan,<sup>73</sup> Uganda,<sup>74</sup>

Morocco,<sup>75</sup> Jordan,<sup>76</sup> Malawi,<sup>77</sup> Nigeria,<sup>78</sup> and China.<sup>79</sup> The phenomenon is both widespread and under-investigated, and merits more in-depth research.

There are striking similarities among women sentenced to death for killing abusive family members. Most cases involve long-term abuse and the absence of effective outside help. Economic dependence, fear of losing child custody, widespread societal tolerance of violence against women, and the difficulty and stigma involved in obtaining a divorce exacerbate the effects of marital abuse. Several death-sentenced women in this category, particularly in Iran and Nigeria, had been forcibly married at a young age. In Sudan, for example, 19-year-old Noura Hussein was reportedly sentenced to death for murdering her husband after he raped her. Noura's family compelled her to marry at 15, but she refused and escaped for three years. Her father forced her to return and complete the wedding ceremony in April 2017. Noura's husband raped her after she refused to have sex with him. The following day, Noura stabbed and killed her husband as he tried to rape her again.<sup>80</sup>

Women facing capital prosecution arising out of domestic abuse suffer from gender discrimination on multiple levels. To begin with, evidence of abuse is difficult to gather. Most domestic violence occurs without any adult witnesses, and female defendants may be reluctant to speak out due to stigma, shame, and lack of trust in police and judicial proceedings. Even if evidence of domestic violence is presented to the court, women face substantial barriers in convincing a court that they acted in self-defense. In many countries, to meet the legal definition of "self-defense," a defendant must show that she reasonably perceived an imminent risk of bodily harm or death, or that she acted to repel an ongoing attack. This definition fails to recognize the dynamics of domestic abuse, which is often perpetrated continually over a long period of time. A woman who has been repeatedly abused may reasonably perceive danger to her life that may not be immediate but is nonetheless ever-present.<sup>81</sup> Courts, however, are generally disinclined to believe that a woman would remain in a long-term relationship if she believed herself to be in serious danger. They may also conclude that the defendant overreacted to a situation that did not create an imminent risk of harm or death. In the United States, "stand your ground" laws,<sup>82</sup> which provide immunity and defense to criminal prosecution, have been rejected by some courts when survivors of domestic

violence have invoked them to justify their use of force when defending themselves from long-time abusers.<sup>83</sup>

As the Office of the U.N. High Commissioner for Human Rights has observed, it is “extremely rare” for domestic abuse to be treated as a mitigating factor during sentencing, although it is known to produce serious physical harm, mental trauma, depression, and psychological distress.<sup>84</sup> In countries with a mandatory death penalty, there is simply no mechanism that would allow the courts to consider such evidence. Thus, in the case of Alice Nungu, who killed her husband after he came home drunk and began to beat her, the Malawi High Court was unable to take into account her history as a victim of domestic violence.<sup>85</sup> Even in those countries with discretionary capital sentencing, courts may ignore or discount the significance of gender-based violence and its consequences. Sometimes, courts within a same country have divergent approaches to domestic violence, leading to the arbitrary application of death sentences.<sup>86</sup>

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.

Nevertheless, there are signs that some jurisdictions are beginning to consider domestic violence in capital trials. In 2014, a court in Belize applied the so-called “battered women’s syndrome” doctrine for the first time in the Caribbean, declining to apply the death penalty to Lavern Longsworth after finding that she killed her husband after years of physical and sexual abuse.<sup>87</sup> 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.<sup>88</sup> China’s Supreme Court and Procuratorate (the state’s prosecutorial body) have recommended that courts no longer seek the death penalty for defendants who kill abusive spouses. Similarly, in August 2017, Indonesia’s Supreme Court enacted new Guidelines on Sentencing Women who are in Conflict with the Law (PERMA 3/2017) to ensure that women’s

rights are upheld during hearings, as well as to identify discrimination and bias against women.<sup>89</sup>

## B. WOMEN ON DEATH ROW FOR DRUG OFFENSES

After murder, drug-related offenses are the most common crimes that lead to death sentences for women—particularly in the Middle East and Asia. For example, the overwhelming majority of women on death row in Thailand were convicted of drug-related offenses.<sup>90</sup> In Iran, drug trafficking is the crime for which women are most frequently sentenced to death, after murder.<sup>91</sup> At least 43 women were hanged for drug crimes in Iran from 2001 to 2017.<sup>92</sup> For instance, Hourieh Sabahi, Leila Hayati, and Roghieh Khalaji, single mothers from economically deprived backgrounds who had no criminal histories, were executed in 2001. Their lawyer argued that their death sentences were illegal under Iranian law because of the small quantity of narcotics involved.<sup>93</sup>

Gender inequality also permeates prosecutions of women for capital drug offenses. Gender dynamics and female disempowerment are salient factors associated with women’s involvement in drug smuggling.<sup>94</sup> Many women engage in drug smuggling to counteract their marginalization and improve their socioeconomic status.<sup>95</sup> In Iran, for example, most drug offenses involving women are small-scale offenses committed by women from economically deprived backgrounds.<sup>96</sup> Drug traffickers employ women as low-level drug mules because they are less likely to be caught than men and do not have the resources to buy and traffic drugs for their own profit, exposing them to exploitation by drug trafficking rings.<sup>97</sup> Researchers have concluded that some women smuggle drugs to please or help someone, usually a male figure, in their lives.<sup>98</sup> Other studies have found that women who were victims of child and/or domestic abuse may engage in drug smuggling to increase their self-esteem.<sup>99</sup>

Many women engage in drug smuggling to counteract their marginalization and improve their socioeconomic status.

Female migrant workers are easy targets for drug trafficking rings because they are typically poor and uneducated, but hold passports.<sup>100</sup> For example, Mary Jane Veloso, a Filipina mother of two boys and former domestic worker in Dubai, was sentenced to death by firing squad in Indonesia for drug smuggling, which

carries a mandatory death sentence. Mary Jane and her legal team have consistently claimed that she had escaped from Dubai after an attempted rape and that she was a victim of human trafficking duped into smuggling heroin into Indonesia.<sup>101</sup> Tran Thi Bich Hahn, a Vietnamese national, was executed by firing squad in Indonesia in 2015 for drug smuggling. She claimed that she was duped by a drug cartel to transport a suitcase from Malaysia—containing 2.4 pounds of methamphetamine—into Indonesia.<sup>102</sup>

### C. WOMEN ON DEATH ROW FOR OFFENSES AGAINST SEXUAL MORALITY

One other category of capital offense deserves particular attention. In some Shariah jurisdictions, offenses against sexual morality, or *zina*, appear gender-neutral on their face, but in practice are applied in a discriminatory manner against women. *Zina*—illicit sexual relations outside of marriage—is a capital offense for a married person. Under Shariah principles, a *zina* conviction implies a consensual sexual relationship and requires a very high standard of proof: the testimony of four eyewitnesses or a confession.<sup>103</sup> It follows that *zina* convictions should be exceedingly rare. Pregnancy may constitute *prima facie* evidence of illicit sexual relations, but according to accepted Shariah rules, pregnancy is not determinative because it may have resulted from rape.<sup>104</sup> Some modern Islamic criminal systems, however, fail to apply these Shariah principles. In Iran, married rape victims are at risk of execution for adultery because of practices which defy these rules. These practices reverse the high evidentiary burden, requiring that pregnant women suspected of adultery prove, by four eyewitness accounts, that their pregnancy resulted from rape—an extraordinarily difficult burden to meet.<sup>105</sup>

The risk of being prosecuted for *zina* creates a strong disincentive for women to report rape or sexual assault. In July 2013, a Norwegian woman on a business trip to Dubai reported a rape to the police, only to be sentenced to 16 months' imprisonment for sex outside of marriage and alcohol consumption.<sup>106</sup> Following intense diplomatic pressure, she was eventually pardoned and released.<sup>107</sup> Similarly, women who have reported rape in Pakistan have been charged with adultery.<sup>108</sup> Zafran Bibi, for instance, was convicted of adultery and sentenced to death by stoning after she declared that she was raped by her brother-in-law. The judge considered her pregnancy proof of adultery since Zafran's husband was in jail at the time.

No charges were brought against the brother-in-law because medical tests showed no signs of force and no witnesses were available to corroborate Zafran's account.<sup>109</sup>

The method of execution prescribed for *zina*—stoning—is almost never applied in practice. Still, it is discriminatory on its face. Shariah law dictates that if the prisoner succeeds in freeing themselves during the stoning, he or she will be pardoned. In preparation for stoning, men are buried to their waist in the ground while women are tied up and buried deeper (theoretically to prevent their breasts from being stoned). Some men, but virtually no women, are able to escape execution. In Sudan, Intisar Sharif Abdallah, whose age was believed to be under 18, was sentenced to death by stoning for adultery. The state failed to provide Intisar with a lawyer or interpreter, even though Arabic is not her first language; moreover, her age was never assessed by the court.<sup>110</sup> Intisar was released in July 2012 after the Ombada court in Omdurman dropped all charges against her due to a lack of evidence.<sup>111</sup> The vast majority of adultery cases and stoning sentences in Sudan have been imposed on women, pointing to the disproportionate and unequal application of this draconian law.<sup>112</sup> Even where stoning sentences are eventually modified, women must live with the terror of such a sentence—a punishment which is in itself cruel and inhumane.

Married sex workers and married victims of sex trafficking also face capital punishment under these laws. One Iranian case exemplifies the tragic and absurd consequences of such a system: a woman forced by her abusive husband into prostitution was convicted as an accomplice to murder when one of her male clients killed her husband. She was also sentenced to death by stoning for adultery. The male client, in contrast, was sentenced to a jail term of eight years.<sup>113</sup>

### D. WOMEN ON DEATH ROW FOR TERRORISM-RELATED OFFENSES

Women also face capital punishment for terrorism-related offenses, especially in Iraq, Pakistan,<sup>114</sup> India, and Iran. In recent years, Iraqi courts have sentenced more than 3,000 people to death, including dozens of women,<sup>115</sup> many of whom were convicted of crimes relating to membership in ISIS. Iraqi and foreign women are receiving the harshest sentences because they traveled to live under ISIS, married an ISIS member, or received a stipend from ISIS

after the death of their husbands.<sup>116</sup> After spending weeks in overcrowded and unsanitary detention centers, women attend an abbreviated trial where their fates are decided. Defense lawyers, when appointed, are unable to communicate with their clients prior to trial, present any evidence in court, summon any witnesses, or use qualified translators. Most trials end with sentences of life in prison or capital punishment.<sup>117</sup>

In Yemen, 22-year-old Asmaa al-Omeissy was sentenced to death in 2018 on “state security” charges in a rebel-controlled area of Yemen.<sup>118</sup> While traveling to her father’s home in the Houthi-controlled region of Sana’a, Asmaa was detained by Huthi rebels.<sup>119</sup> While in detention, Asmaa was tortured and accused of terrorism, collusion with foreign powers, and illicit sexual intercourse with her travel companions.<sup>120</sup> Following a trial that lacked substantive procedural guarantees, she was condemned to death while her father and two travel companions were released.<sup>121</sup> In Iran, Shirin Alamhouli was hanged in 2010 after being convicted of *moharebeh* (enmity with God) for her alleged involvement in the Free Life Party of Kurdistan (PJAK) group. A few days before her impromptu execution, Shirin wrote in a letter: “I was arrested in April 2008 and was taken directly to the headquarters of the Sepah. As soon as we arrived there, and before I was asked any questions, they began beating me. I was there 25 days, of which I was on hunger strike for 22 days. I suffered all types of physical and mental torture.”<sup>122</sup> India also Fehimda Syed sentenced to death in 2009 for participation in the 2003 Mumbai bombings.<sup>123</sup>

#### E. WOMEN ON DEATH ROW FOR WITCHCRAFT

Although men have been sentenced to death for witchcraft, it is typically women who are accused of sorcery-related crimes. The word “witch” is almost exclusively used to refer to a woman. For centuries, women have been persecuted, prosecuted, tortured, and executed for witchcraft, which is perceived as the cause of misfortunes including deaths, illnesses, accidents, loss of livestock, and droughts.<sup>124</sup> The practice continues today.

In 2006, Fawza Falih was sentenced to death in Saudi Arabia for “bewitching” a man, causing him to become impotent.

According to the United Nations, thousands of women are still hunted, beaten, tortured, and in many cases murdered

because of their reputed use of witchcraft.<sup>125</sup> Nevertheless, death sentences and judicial executions for witchcraft are becoming scarcer and are mainly applied in Saudi Arabia. In 2006, Fawza Falih was sentenced to death in Saudi Arabia for bewitching a man, causing him to become impotent. The judges relied on Fawza’s coerced confession and on the statements of witnesses who claimed to have seen her bewitching the man. In court, she explained that her interrogators beat her during 35 days in detention at the hands of the religious police, and that as an illiterate woman, she did not understand the document she was forced to fingerprint.<sup>126</sup> Likewise, Amina bint Abdel Halim Nassar was reportedly beheaded in Saudi Arabia for practicing witchcraft in 2011.<sup>127</sup>

#### F. WOMEN ON DEATH ROW FOR OTHER OFFENSES

In Iran, 17-year-old Leyla Mafi was arrested during a raid on a brothel and sentenced to death for prostitution.

Prostitution, brothel keeping, blasphemy, kidnapping, and armed robbery are other crimes for which women receive capital punishment. In Iran, 17-year-old Leyla Mafi was arrested during a raid on a brothel and sentenced to death for prostitution. Leyla, who was forced into prostitution by her mother when she was eight, was intellectually disabled. Leyla’s death sentence was eventually commuted. Instead, she received 99 lashes and was sent to a rehabilitation center in Tehran in 2006.<sup>128</sup> In Nigeria, armed robbery is the crime for which women are most frequently sentenced to death, after murder.<sup>129</sup> In China, women have been sentenced to death for financial crimes and child trafficking.<sup>130</sup> Women in Sudan and Pakistan have been sentenced to death for apostasy<sup>131</sup> and blasphemy<sup>132</sup>. In 2010, Aasia Bibi, an illiterate farmer and mother of five, was sentenced to death by hanging for blasphemy in Pakistan. One day while working in the fields, a group of Muslim women refused to drink water from a water bowl arguing that Aasia, who is Christian, had contaminated it. During the incident, the women accused Aasia of blasphemy, a charge that she denied.<sup>133</sup> Aasia has been on death row for eight years and is currently waiting for the Supreme Court to hear her appeal.<sup>134</sup>



## V. Women in Vulnerable Situations Facing the Death Penalty

The death penalty is often applied to the most vulnerable and marginalized members of society. The vast majority of death row prisoners are indigent, and many suffer from mental disorders or intellectual disabilities. In some countries, members of racial, ethnic, or religious minorities are especially vulnerable to prosecution for capital crimes.

Women on death row are no exception. But women also face intersecting forms of discrimination based on “gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence,” all of which have “an adverse impact on the ability of women to gain access to justice on an equal basis with men.”<sup>135</sup> Youth, forced and/or child marriage, mental illness or intellectual disability, migrant worker status, poverty, and race and ethnicity are all factors that increase the risk that a woman will be sentenced to death. Many women on death row fall into several of these categories, compounding their vulnerability.

### A. JUVENILES AND SURVIVORS OF FORCED MARRIAGE

One of the most widely accepted tenets of international law prohibits the imposition of death sentences on children under the age of 18 at the time of the offense.<sup>136</sup> Nevertheless, some countries continue to execute juveniles, in part because of the legal system’s failure to verify an offender’s age at the time of the offense.<sup>137</sup> While a minority of women on death row are juvenile offenders, their cases merit close scrutiny because of their vulnerability and because the patterns their cases reveal are emblematic of the challenges faced by many women on death row.

Virtually all cases of death-sentenced minors that we found involve gender-based violence, child marriage, and/or sexual abuse. Trial courts around the world largely fail to take into account gender-based violence as a mitigating factor to reduce sentences, even in the context of child marriage.<sup>138</sup> This omission erases the role of domestic violence in cases of female minors who kill their abusers, a significant concern given the prevalence of

domestic abuse worldwide in marriages involving girls.<sup>139</sup> Similarly, courts rarely consider the mental health effects of child marriage, such as post-traumatic stress disorder, depression, and other mental or emotional disorders.<sup>140</sup> While youthfulness exacerbates these effects, adult women in abusive relationships should also benefit from the protection of laws recognizing the relevance of domestic abuse and child marriage to capital sentencing.

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Four cases from four different countries illustrate the universality of these concerns across cultures and legal systems. The recent case of Maimuna Abdulmumini in Nigeria is emblematic. Maimuna was married at the age of 13. Five months into her marriage, her husband burned to death in alleged arson attack while he slept. Maimuna was arrested and charged with murder. She languished in prison for six years while her trial dragged on. In 2012, a Nigerian court convicted Maimuna of culpable homicide and sentenced her to death. Lawyers acting *pro bono* challenged her death sentence before a regional court, the ECOWAS Community Court of Justice, arguing that imposing a death sentence on a juvenile violated international law and the African Charter on the Rights and Welfare of the Child. The ECOWAS court ruled that Nigeria had violated its international human rights obligations, ordered a stay of execution, and awarded Maimuna damages.<sup>141</sup> Maimuna was released from prison in 2016.<sup>142</sup>

The case of Zarbibi,<sup>143</sup> sentenced to death in Iran, raises similar concerns. Zarbibi was 15 years old when she was forced to marry a 27-year-old man. In a diary she wrote from her prison cell, she described how her husband abused her physically and sexually, separated her from her family, and forced her to leave school. At the age of 16, while four months pregnant, she killed her husband with a kitchen knife.<sup>144</sup> The court sentenced her to death, and she gave birth to her daughter while imprisoned on death row. Under Shariah law, the family of the victim may pardon the perpetrator of a serious crime. Zarbibi’s late husband’s family pardoned her on the condition that she marry his brother.<sup>145</sup> She agreed and was released from death row. According to her lawyer, however, her freedom remains highly restricted.<sup>146</sup>



In Tanzania, Mary Raziki,<sup>147</sup> who was forced to marry at age 16, was sentenced to death for the murder of her co-wife. Mary suffered severe domestic violence at the hands of her husband, including physical, psychological, and economic abuse. According to Mary's older sister, Mary's house resembled a cow shed. Mary's husband stole crops from Mary's *shamba* (farm) to take them to his new home, forcing Mary to work several jobs, and sometimes beg for money to feed their children.<sup>148</sup> Mary sought protection from village authorities and from her family, but they did nothing to prevent the violence, protect Mary and her children, or hold her abusive husband accountable. Mary stated that she did not intend to cause the death of her husband's second wife; she set fire to their home believing it was empty. Because of Tanzania's mandatory death penalty scheme, however, the trial judge was unable to consider her lack of malice or the abuse she suffered, and sentenced her to death. Mary has been on death row for more than 15 years.<sup>149</sup>

In Indonesia, although juveniles are by law excluded from capital punishment, some courts have treated girls under the age of 18 as criminally responsible adults by virtue of their married status, even when they act under compulsion from their adult husbands. One woman currently on death row was a minor but married at the time of her offense. Susi<sup>150</sup> was convicted of killing a child when she was 17 years old under the orders of her older, abusive husband. Her husband had previously and without her knowledge killed six boys and one man. The court acknowledged in its findings of fact that Susi was not aware of her husband's homicidal acts. Importantly, the court further acknowledged that she repeatedly resisted her husband's orders to kill a child and only obeyed after he threatened her life. Despite these findings, Susi and her husband received the same sentence: a death sentence for premeditated murder. The maximum punishment for a juvenile offender is normally 10 years' imprisonment but this girl was sentenced to death.<sup>151</sup>

## B. WOMEN WITH MENTAL ILLNESSES AND INTELLECTUAL DISABILITIES

Multiple studies have confirmed that incarcerated women suffer high rates of mental illness. According to a study carried out in the United States from 2011 to 2012, incarcerated women reported significantly higher rates of mental health problems than men in prison.<sup>152</sup> In the United Kingdom, women in prison are five times more likely to have a mental health issue than women in

general. Close to half of incarcerated women in the U.K. report having attempted suicide, which is twice the rate of men in prison (21%).<sup>153</sup> The World Health Organization found that incarcerated women have high rates of substance abuse and histories of abuse.<sup>154</sup>

International law prohibits the execution of individuals with mental illness or intellectual disability.<sup>155</sup> The U.N. Office of the High Commissioner for Human Rights has urged all retentionist states not to impose the death penalty on or execute a person suffering from any mental or intellectual disabilities.<sup>156</sup> While there is widespread agreement on the prohibition, in practice states do not apply it.

The case of Grace Banda<sup>157</sup> is illustrative. Grace, an intellectually disabled grandmother, was sentenced to death in Malawi in 2003.



Photo Credit: Sofia Moro

Dr. George Woods, a neuropsychiatrist, concluded that she suffers from intellectual disability as well as Fetal Alcohol Spectrum Disorder (FASD). She attended three

years of primary school but she cannot read or write. As a child her growth was stunted, most likely as a result of FASD and malnutrition. Grace had been married for over 30 years, then left her husband after he started beating her and having relations with other women. During a famine in her village, her grandsons stole maize from a neighbor's field. One of the boys, suffering from malnutrition, died from the beating she inflicted to discipline him. She attempted to revive him to no avail, and later reported the incident to the authorities. After spending 13 years on death row, Grace was granted a sentence rehearing in 2016.<sup>158</sup> Based in part on her intellectual disability, the High Court reduced her sentence to a term of years. Already elderly and in poor health, Grace was released on humanitarian grounds in 2018.

### C. MIGRANT WORKERS

In some countries, particularly Gulf nations like the United Arab Emirates and Saudi Arabia, foreign nationals—and in particular, foreign migrant workers—are sentenced to death in disproportionate numbers. This extends to foreign women on death row, many of whom are domestic workers.<sup>159</sup> In the UAE, for example, 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.<sup>160</sup>

All migrant workers, both male and female, are particularly vulnerable to unfair capital trials: they are poor, they lack linguistic, cultural, and institutional knowledge of the criminal justice process, and they are often denied access to effective legal representation and translation.<sup>161</sup> In addition, language barriers, illiteracy, and economic vulnerability may leave migrant workers at particular risk of forced and false confessions.<sup>162</sup>

Foreign female domestic workers often face exploitative work situations. A recent report on the abuses perpetrated against female foreign domestic workers in the UAE notes that domestic workers who leave their employers or make complaints against them will sometimes be charged with capital crimes.<sup>163</sup> Media reports indicate that domestic workers have sometimes been charged with witchcraft, but more frequently have been charged with *zina* (extramarital sexual relations under Islamic law). In two reported cases, pregnant domestic workers were convicted of *zina*. One, who was unmarried, was sentenced to one

hundred lashes; the other, who was married, was sentenced to death by stoning.<sup>164</sup>

In Saudi Arabia, as in the UAE, many women on death row are also migrant workers that do not speak Arabic.

In Saudi Arabia, as in the UAE, many women on death row are also migrant workers that do not speak Arabic.<sup>165</sup> Several foreign women serving as domestic workers have been charged with killing their employers or their employers' children. For instance, Rizana Nafeek, a Sri Lankan domestic worker, was executed in 2013 for killing an infant in her care. According to Human Rights Watch, she was only 17 at the time of the crime, and had no legal representation during her interrogation or at her first trial.<sup>166</sup> In 2015, at least four of the 158 executed individuals in Saudi Arabia were women: all were non-nationals, including two Indonesians, one Myanmar national, and one woman from Syria.<sup>167</sup> Their status as foreigners, in tandem with unequal status of women in Saudi society, subjected them to compounded bias in the criminal justice system.

### D. POOR WOMEN

In 2017, the U.N. Office of the High Commissioner of Human Rights called the death penalty a “class-based form of discrimination in most countries, thus making it the equivalent of an arbitrary killing.”<sup>168</sup>

People living in poverty are disproportionately arrested, incarcerated, and sentenced to death in countries around the world. In general, their communities are more heavily policed, they lack access to quality legal representation, and cannot afford to appeal their cases in court. They typically cannot afford bail and therefore comprise the vast majority of the pre-trial prison population, which, in turn, hinders their ability to obtain counsel to mount an effective defense.

Many women in the criminal justice system, and the vast majority of those on death row, are from poor and marginalized communities. Most women who are detained are unable to afford a lawyer, and are more likely to be illiterate and unaware of their legal rights.<sup>169</sup> Illiteracy and lack of education among poor women leave them more vulnerable to discrimination, coercion, and exploitation. The United Nations has documented reports of illiterate

and poor women signing confessions, which they neither wrote, nor understood.<sup>170</sup>

Many women in the criminal justice system, and the vast majority of those on death row, are from poor and marginalized communities.

The National Law University Delhi found that at least 74.1% of death row prisoners in India, including all 12 women on death row in 2015, were “economically vulnerable” based on their landholding and occupation.<sup>171</sup> Of those 12, six had never attended school at all, and only two had advanced beyond secondary school.<sup>172</sup> The National Law University Delhi determined that nine of the women on death row were unemployed,<sup>173</sup> and seven out of 12 were married before turning 18 years of age.<sup>174</sup> Interviews with lawyers and nonprofit organizations in Nigeria,<sup>175</sup> Jordan,<sup>176</sup> Morocco,<sup>177</sup> Pakistan, Uganda,<sup>178</sup> and Thailand,<sup>179</sup> indicate that the vast majority of women on death row in those countries are similarly indigent and illiterate.

## E. RACIAL AND ETHNIC MINORITIES

In the United States, numerous studies have concluded that racial discrimination leads to disproportionate sentencing in capital cases, particularly in inter-racial crimes involving black defendants and white victims.<sup>180</sup> One of the factors that leads to racial bias in sentencing is the exclusion of black persons from juries. In 2005, the United States Supreme Court found that prosecutors in Dallas, Texas, had systematically excluded black people from serving on juries.<sup>181</sup> The Court observed that prosecutors that draw “racial lines in picking juries establish ‘state-sponsored group stereotypes rooted in, and reflective of, historical prejudice.’”<sup>182</sup>

The case of Kimberly McCarthy in Texas illustrates the dangers of such discriminatory practices. Kimberly was a black woman sentenced to death in Texas for the murder of her white neighbor in 1997. In 2002, Kimberly successfully appealed her conviction, but was convicted and sentenced to death again at a re-trial later that same year. At her retrial, the jury consisted of 11 white persons and only one black person. In the jury selection process, the prosecutor dismissed three of the four prospective jurors who were black, leaving just one black person on the jury. Kimberly’s lawyer failed to object to the

prosecution’s exclusion of black persons from the jury, and her first appellate lawyer failed to raise it on appeal. Although Kimberly finally received a lawyer in 2013 who challenged the prosecution’s racial discrimination in a *habeas corpus* appeal, the court dismissed the appeal on the grounds that it had not been raised in a timely manner. Kimberly McCarthy was executed by lethal injection on June 26, 2013.<sup>183</sup>

## VI. Prison Conditions for Women under Sentence of Death

### A. INTERNATIONAL LEGAL PROTECTIONS FOR WOMEN IN DETENTION

Several international and regional treaties, as well as internationally recognized standards and norms, safeguard the human rights of women pre-trial, during trial, and while incarcerated.<sup>184</sup> The foundational conventions protecting the human rights of capital defendants and death-sentenced prisoners are the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). The 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.”<sup>185</sup>

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.

Nevertheless, as this report underlines, 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.<sup>186</sup> In the specific context of the death penalty, international and regional instruments focus on women’s roles as mothers and caregivers, excluding women from execution when they fill these roles. There is a universal prohibition on the execution of pregnant women, enshrined in four international and regional human rights conventions: the ICCPR,<sup>187</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa,<sup>188</sup> African Charter on the Rights and Welfare of the Child,<sup>189</sup> and Arab Charter on Human Rights.<sup>190</sup> Depending on the country, pregnant women who receive a death sentence either benefit from a commutation to a term of imprisonment or receive a stay of execution until after the birth of the child.<sup>191</sup> The African regional instruments further prohibit the execution of mothers of infants and young children,<sup>192</sup> while the Arab Charter prohibits the execution of any

“nursing mother within two years from the date of her delivery.”<sup>193</sup>

The ICCPR is one of the mostly widely ratified human rights treaties in the world, and 69 of the 84 countries and territories that retain the death penalty are parties to the treaty.<sup>194</sup> The vast majority of African Union member states are parties to the African instruments,<sup>195</sup> and 13 of the 16 members of the Arab League that retain the death penalty are parties to the Arab Charter.<sup>196</sup>

Until recently, international protections for prisoners—and states’ corresponding obligations—did not take into account the unique forms of discrimination and stigma experienced by women prisoners.<sup>197</sup> In 2010, however, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (“Bangkok Rules”) comprehensively supplemented existing safeguards<sup>198</sup> for prisoners with gender-specific measures.<sup>199</sup>

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The Bangkok Rules apply a gender lens to an extensive range of issues, providing gender-sensitive guidance on prison admission,<sup>200</sup> security and search procedures,<sup>201</sup> disciplinary procedures,<sup>202</sup> institutional personnel training,<sup>203</sup> and prisoner supervision.<sup>204</sup> The Rules also cover women prisoners’ access to general and female-specific physical and mental health care,<sup>205</sup> training opportunities,<sup>206</sup> and rehabilitation.<sup>207</sup> Recognizing the detrimental impact of isolation on women, the Rules stress the importance of women’s communication with family and friends, and especially contact with their children.<sup>208</sup> The Rules also identify considerations for especially vulnerable categories of women: women under arrest or awaiting trial,<sup>209</sup> juvenile female prisoners,<sup>210</sup> foreign nationals,<sup>211</sup> minorities and indigenous women,<sup>212</sup> pregnant women,<sup>213</sup> breastfeeding mothers,<sup>214</sup> and mothers in prison with a child.<sup>215</sup>

The 2015 revisions to the United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”) further recognize women’s unique needs. The Mandela Rules have provisions on separated housing,<sup>216</sup>



supervision by female prison staff,<sup>217</sup> hygiene,<sup>218</sup> and banning restraints during labor and childbirth.<sup>219</sup> The Mandela Rules also prohibit visiting restrictions as a way to discipline prisoners, particularly women prisoners.<sup>220</sup>

While most international safeguards focus on conditions of imprisonment, international norms further require states to address the root causes of women's incarceration, which include poverty—caused by discrimination in society, education, and employment—drug and alcohol addiction, and myriad forms of gender-based violence.<sup>221</sup> The prevalence of physical and sexual violence as a cause of women's incarceration is well documented, and states have an obligation under international law to prevent and respond to gender-based violence that contributes to women's incarceration.<sup>222</sup>

Additionally, states must identify and respond to structural causes of violence against women, which include intersecting forms of discrimination against women.<sup>223</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) prohibits such discrimination, and the CEDAW Committee has found that placing women in detention facilities that subject them to gender-based violence constitutes a violation of their human rights.<sup>224</sup> Referencing the Bangkok Rules and Standard Minimum Rules, the CEDAW Committee has correspondingly found that detention facilities that fail to accommodate women's specific needs and vulnerabilities violate CEDAW's anti-discrimination provisions.<sup>225</sup> Violence against women in detention—including abuse and sexual harassment, inappropriate touching during searches, rape and sexual coercion—can also rise to the level of torture or cruel, inhuman or degrading treatment or punishment, in contravention of the ICCPR and CAT.<sup>226</sup>

That women's needs in prison were ignored for so long under international law is attributable to gender discrimination and stereotypes of women in the criminal justice system: “popular as a victim, forgotten as a defendant.”<sup>227</sup> This ignorance is even more pernicious in the case of women on death row, who remain largely invisible as a specific category of rights bearers under international law. The importance of implementing human rights safeguards for women under sentence of death takes on even greater importance during an era of *de facto* moratoria, as women tend to remain on death row for increasingly longer periods.

## B. PRISON CONDITIONS FOR WOMEN IN PRISON AND ON DEATH ROW

Despite attempts by the United Nations to set minimum international standards for the treatment of prisoners, detention conditions in most death penalty states are woefully inadequate and in some cases life-threatening. As noted above, it was not until 2010 that the U.N. General Assembly adopted the Bangkok Rules, which address the special needs of women prisoners. Women on death row are not specifically mentioned under the Bangkok Rules, however, and they face uniquely harsh conditions that merit additional research. Information on conditions of confinement for death row prisoners is scarce, particularly as regards women prisoners.

### *Overcrowding and Living Conditions*

Prison overcrowding is a global crisis in both women's and men's detention facilities, leading to dangerously unhygienic conditions. Overcrowding affects female death row prisoners as well, particularly where they are confined together with other convicted prisoners. In Thailand, for example, where female death row inmates are held with the general population, women take turns sleeping on the bare floor.<sup>228</sup> The women spend about 14 hours per day in extremely crowded cells.<sup>229</sup> In India's Tihar Jail, which may be South Asia's largest prison, the women's ward—which includes women on death row—accommodates twice as many inmates than its official capacity.<sup>230</sup>

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Living conditions on death row are poor for death-sentenced women who are detained with the general female prison population. In Sri Lanka, female inmates receive paper-thin beds to sleep on, and the temperatures in the unventilated rooms reach dangerously high levels.<sup>231</sup> If a female prisoner in Malawi needs to urinate or defecate during the night, she must use a bucket, since the toilets and showers are located outside the cells and the inmates must stay in their cells at night.<sup>232</sup> Access to clean or hot water, as well as to heating, is limited in many countries. In Indonesia, water is restricted even during the dry seasons, when prisons can become extremely hot and humid.<sup>233</sup> Water in Zambia is also

restricted and toilets do not flush, causing severe hygiene problems.<sup>234</sup>

In some countries, women on death row are held in shackles. In China, all death row inmates, including women, are shackled at all times by their hands and feet.<sup>235</sup> Meriam Ibrahim, sentenced to death in Sudan for apostasy<sup>236</sup> in 2014, was shackled to heavy chains in prison while eight months pregnant and caring for a young child.<sup>237</sup> Cameroon also shackles its death row inmates, or otherwise restricts their movement in prison.<sup>238</sup>

In most death penalty states, female prisoners do not receive enough food, whether or not they are on death row. Aside from poor nutritional content, food served at women's prisons is often not adequate in calories. The total budget for food in Indonesia is equal to US\$1.20 per inmate per day.<sup>239</sup> In practice, it means that no accommodations can be made for inmates with dietary restrictions, such as one diabetic prisoner.<sup>240</sup> In India, regulations provide that men and women receive the same amount of calories per day, but in practice, women receive much less food than men. Moreover, food of a higher caloric value is available for men who undertake "heavy" work, but women are not allowed to do such work and cannot therefore access higher quality food.<sup>241</sup>

### ***Separation from Men and Other Categories of Prisoners***

In conformity with international norms, men and women prisoners are detained in different prisons or in separate sections of prisons in almost every country in the world.<sup>242</sup> There are reportedly very few exceptions.

Whether death-sentenced women are held separately from other female prisoners varies. In China, where death row inmates are shackled at all times, minors are in the same cells as adults, and minors reportedly often help death row inmates eat.<sup>243</sup> Some countries, such as Zambia and Jordan, separate death row inmates from other women only during sleeping hours.<sup>244</sup> Others, such as Malawi, Pakistan and Tanzania, keep all women together at all times. In Uganda, condemned women wear separate uniforms,<sup>245</sup> whereas in India, at least two female death row inmates are housed in each cell where they are forced to spend most of their days and nights.<sup>246</sup>

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Women on death row are also sometimes subjected to solitary confinement, either for disciplinary reasons or as a long-term arrangement. This practice may violate international human rights law. We found reports of solitary confinement for women on death row in China,<sup>247</sup> Indonesia,<sup>248</sup> Jordan,<sup>249</sup> India,<sup>250</sup> and the United States.<sup>251</sup>

### ***Access to Medical Care***

Medical care for female death row prisoners is universally inadequate and well below international standards. While health care for male prisoners is also substandard, women prisoners have particular health needs that are often ignored.

With respect to general medical care, women on death row, like all incarcerated women, sometimes face more obstacles accessing quality treatment than men. In India, men's facilities include inpatient treatment, mental and physical healthcare facilities, prescription dispensaries, and a recovery room, whereas women's facilities consist of only a small clinic. Without adequate healthcare in prison, "women have to be escorted to the hospital in a special ambulance and with prison guards" even for minor forms of treatment. This "makes them reliant on the prison officials for accessing basic healthcare, and is likely to act as a potential barrier to healthcare."<sup>252</sup> In Indonesia, health clinics in women's prisons are basic and are not always staffed with doctors, unlike infirmaries in men's prisons. Women must endure secure transport to hospitals for even minor treatment.<sup>253</sup> A study conducted in the United States revealed that women prisoners were systematically subjected to mistreatment and denied access to medical and other services normally available to their male counterparts.<sup>254</sup> In Sierra Leone, one of the three women on death row suffers from mental illness, but has never received psychiatric treatment.<sup>255</sup>

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Access to women's health services is even more problematic. In Japan, female prisoners rarely receive obstetric care.<sup>256</sup> In Thailand and Myanmar, inmates have reportedly given birth alone in prison.<sup>257</sup> Women in some other countries fare better: in Jordan, a gynecologist reportedly visits the women's prisons regularly.<sup>258</sup> In Pakistan, women receive gynecological exams.<sup>259</sup> Prisons in Malawi<sup>260</sup> and Nigeria<sup>261</sup> take pregnant inmates to a nearby hospital for delivery and antenatal care.

In many countries, it is challenging or impossible for women to access sanitary pads or other menstruation products. In Indonesia, female prisoners must buy pads from the prison commissary store, but these are of poor quality and often lead to discomfort or complications.<sup>262</sup> Jordanian prisoners are given a monthly allowance of 20 Jordanian dinars (equivalent to about US\$28), and use this money to buy sanitary pads and other hygiene products for themselves. This amount is reportedly insufficient for all the supplies the inmates must purchase.<sup>263</sup> In other countries, women must make do with alternatives such as newspapers, tissues and pieces of blankets or prison uniforms.<sup>264</sup> Similarly, female inmates in Zambia use and wash pieces of cloth, often with inadequate or no detergent,<sup>265</sup> since the prison does not supply soap.<sup>266</sup>

In many countries, it is challenging or impossible for women to access sanitary pads or other menstruation products.

### ***Violence***

International standards require that women prisoners remain under the authority of female prison staff and that prisons must take precautions in protecting female inmates from gender-based violence. In conformity with the Bangkok Rules, prison staff in women's prisons is most often female,<sup>267</sup> but many male professionals, such as doctors, do enter women's prisons regularly.<sup>268</sup>

Nevertheless, female prisoners are exposed to a risk of violence. Research on this issue is clouded by incomplete or erroneous information, arising from challenges in reporting violence, as well as institutional indifference or negligence. The data we have gathered shows tremendous variation between prisons, some of which appear to be free of violence, while others are characterized by systemic abuse. In China, women prisoners (like their male counterparts) suffer at the hands of "cell trustees"

who control their cellmates through abusive means, sometimes leading to deaths.<sup>269</sup>

In the few countries where male guards are allowed to work in female prisons, relationships—consensual or forced—may form between male guards and female inmates. There are reportedly "transactional relationships" between some male guards and female inmates in Tanzania, whereby inmates receive protection and food in exchange for sex.<sup>270</sup> In some cases, the violation of women's bodies is a weapon in the state's arsenal of repression. Investigations into female political prisoners in Iran in the 1980s revealed cases in which young women endured state-sanctioned rape prior to their executions.<sup>271</sup>

### ***Restrictions on Contact with Family***

In many death penalty countries, women are the primary caregivers of children and elderly family members. As such, restrictions on visitation can be devastating for women prisoners as well as their dependent family members. Moreover, the social stigma associated with women who are convicted and imprisoned, paired in some cases with restrictive family and child visitation rules, means that many female death row inmates around the world suffer an enduring lack of family contact, contributing to the high levels of depression suffered by women prisoners.

Physical restrictions placed upon visits vary. Some prisons are geographically isolated or located far from the prisoner's community, making it expensive and arduous for families to visit.<sup>272</sup> Others, such as prisons in Nigeria or in the United States, maintain strict visitation policies, such as specific days and times that visitors are allowed, increasing the difficulty of planning visits.<sup>273</sup> Many countries we studied allow contact visits; that is, visits where inmates can physically touch their family members and are not separated by a barrier such as glass, bars, or other partition. There are exceptions, however: some U.S. states deny condemned women all contact visits.<sup>274</sup>

In some countries, the visitation rights of death row inmates are even more limited than those of the general prison population. Nigeria's prison guards stand watch over visitations between families and death row inmates; it is unclear whether this practice is true for legal visits as well.<sup>275</sup> Similarly, in Japan, guards take notes on conversations between death row inmates and their family members.<sup>276</sup> In those countries that do allow visitation,

restricting or withholding visitation is sometimes used by the guards to punish death row inmates.<sup>277</sup>

prison, “it feels normal.” Inmates do not act out; in fact, death row inmates walk the halls with limited security.<sup>286</sup>

Many death penalty countries allow female prisoners to bring their young children to prison to live with them, but only infrequently are children detained on death row. In India, a female death row prisoner currently sentenced to death gave birth in prison and her son stayed with her until he reached age seven, at which point prison regulations mandated that he leave. As the inmate had no family willing to raise him, he was placed with a foster family and suffers greatly from the separation and adjustment to life outside prison.<sup>278</sup>

### ***Work, Education, and Religion***

Many women’s prisons around the world implement work and education programs that offer inmates stability, routine, and a sense of accomplishment.<sup>279</sup> Women under sentence of death in Indonesia may take part in cooking and cleaning courses,<sup>280</sup> and in Malawi they may participate in weaving, gardening, and chores.<sup>281</sup> In other states, however, these programs are restricted to those who may eventually be released. For instance, the general female prison population in Thailand has access to work programs, but death row inmates do not. Death row inmates who cannot work are more susceptible to depression as they have less to take part in and form fewer meaningful relationships with other female inmates.<sup>282</sup> As one woman in Ghana explained, after being denied educational opportunities while on death row: “I don’t do anything. I sweep and I wait.”<sup>283</sup>

As one woman in Ghana explained, after being denied educational opportunities while on death row: “I don’t do anything. I sweep and I wait.”

Nevertheless, in nearly every country studied, women in prison have found ways to keep themselves busy despite lack of resources and restrictive environments. Luzira Prison in Uganda offers a remarkable case study. Death row inmates who were confined for years awaiting appeals fought for the same educational opportunities as their male counterparts. After some persuasion, the prison director launched activities for women inmates, including those under sentence of death.<sup>284</sup> Prisoners take part in arts and crafts, sports, school, singing, and even a breakdancing club.<sup>285</sup> To those who have visited the

## VII. Country Case Studies

The countries profiled in the following section span many geographic regions and legal systems. Importantly, they represent diverse cultural, religious, and political contexts, and differing levels of resources. Many similar themes emerge across all regions, including women prisoners' experiences of poverty, trauma and gender-based violence, gender stereotyping at trial, lack of access to quality legal representation, and inhumane prison conditions.

We wish to emphasize that these countries are not unique. The countries were chosen not because their legal systems are uniquely flawed or because they treat women in conflict with the law better or worse than other countries. Instead, these profiles collate the rich primary research gathered by our expert in-country partners. As the research was driven by our partners' investigations, some topics emerge with varying depth and prominence. This should not be understood to mean that the outlined issues are the most unique or most central concerns in that country, or that these issues do not occur in other countries profiled or not included in the report. Many other countries would benefit from similar study. Accurate data on the demographics and issues of women on death row is essential to augment our understanding of the problems of women facing the death penalty around the world.

### India

Twelve women were on death row in India as of June 2018,<sup>287</sup> about 3% of the total death row population.<sup>288</sup> India carries out few executions, but there are hundreds of prisoners under sentence of death. In the last ten years, the country has executed three individuals, all of them for terrorism-related offenses.<sup>289</sup> Female executions have not been recorded for many years. The last man was executed in July 2015, when Yakub Memon was hanged for financing the 1993 Mumbai bombings.<sup>290</sup> As of August 2018, there were 406 prisoners on death row.<sup>291</sup> In 2017, courts handed down 107 new capital sentences,<sup>292</sup> but only 4.9% of death sentences issued by trial courts receive final confirmation by the highest court,<sup>293</sup> which restricts the application of capital punishment to the "rarest of rare" cases.<sup>294</sup> A wide range of offenses are punishable by death, including murder, kidnapping with murder, armed robbery with murder, sexual offences, and terror offenses.

In practice, however, the majority of death sentences are imposed for murder.<sup>295</sup> In recent years, India has expanded the scope of the death penalty by adopting new capital laws for hijacking resulting in death<sup>296</sup> and aggravated rape.<sup>297</sup>

One troubling aspect of the crimes for which women are sentenced to death in India is their relationship with restrictive marriage customs.

Four of the 12 women on death row were convicted of murdering a member of their immediate or extended family.<sup>298</sup> One woman was sentenced to death for terrorism,<sup>299</sup> two for child kidnapping and murder,<sup>300</sup> and two for sacrificial killings.<sup>301</sup> All but two of the women on death row acted with at least one co-conspirator.<sup>302</sup> Eight of the 12 women were charged with multiple murders.<sup>303</sup> One troubling aspect of the crimes for which women are sentenced to death in India is their relationship with restrictive marriage customs. Although officially banned, the caste system<sup>304</sup> and its attendant marriage rules formed the background of at least three of the killings for which women received a death sentence.<sup>305</sup>

India is one of the rare death penalty countries where courts have in some cases recognized "sustained provocation" as a defense to murder, upholding women's right to self-defense when they murder an abusive relative.<sup>306</sup> For instance, in *Champa Rani Mondal v. State of West Bengal*, the Supreme Court acquitted a woman who had killed her brother-in-law when he tried to rape her.<sup>307</sup> The High Court of Delhi acquitted a woman who had killed a man who attempted to molest her daughter.<sup>308</sup> Nevertheless, India does not have formal sentencing guidelines for battered women. Thus, women's histories of abuse are considered on a case-by-case basis and are subject to the judge's discretion.<sup>309</sup>

The Prisons Act of 1894 states that death row prisoners must be kept apart from other prisoners,<sup>310</sup> but only when all appeals are exhausted and their sentences are confirmed.<sup>311</sup> Men and women are held separately in Indian prisons. As of November 2017, several women on death row in India were living with the general population of female prisoners.<sup>312</sup> The conditions in the women's wards appear notably different from the men's. Male wards are generally larger and greener as compared to the

“muted,” “contained,” and “restrictive” female facilities.<sup>313</sup> In some prisons, a single room serves as the female ward.<sup>314</sup> Women’s prison cells are unsanitary, sometimes swarming with rats.<sup>315</sup> Infrastructure in female prisons is poorer. While some men’s wards have hospitals, including operating rooms, women’s wards have, at best, small clinics.<sup>316</sup> Without adequate healthcare facilities in prison, women have to be assessed and transported to the hospital by prison guards.<sup>317</sup> In addition, female prisoners do not have access to libraries or to sports. Thus, unlike their male counterparts, female prisoners must rely upon prison wardens to retrieve books, and have fewer options for physical exercise.<sup>318</sup>

Gendered assumptions underlie the operation of female prison wards, which also house death-sentenced women. While male wards offer physical labor and work options, including factory work to earn money, women are restricted to embroidery and tailoring.<sup>319</sup> Death row prisoners, regardless of gender, are not allowed to work.<sup>320</sup> In practice, however, the ability to work while on death row varies across prisons.<sup>321</sup> While two female death row prisoners have reportedly been allowed to do prison work—such as cleaning and gardening—others have limited options.<sup>322</sup> Moreover, the 2016 Model Prison Manual imposes numerous daily restrictions on women to force them to conform with traditional expectations concerning their appearance.<sup>323</sup> All female prisoners are obligated to wear a *saree*, traditional Indian attire for women. Finally, although men and women theoretically receive the same amount of food, in practice women receive less.<sup>324</sup>

### CASE STUDY: TRISHA

Their marriage was forbidden. Twenty-four-year-old Trisha<sup>325</sup> had earned two master’s degrees and Kamal was a twenty-six-year-old uneducated carpenter. Trisha and Kamal not only belonged to different socioeconomic classes but also to different castes. They knew that creating a life together was impossible.

When Trisha’s family found out about the young lovers’ secret affair, they opposed it. Months later, when several members of Trisha’s family were found dead in their home, Trisha and Kamal were arrested for the killing. Two prosecution witnesses, including the father of Trisha’s deceased sister-in-law and Trisha’s cousin, testified at trial that Trisha was beaten by her father, who opposed her marriage with Kamal. Trisha’s father had

also confiscated her mobile phone and disconnected the house phone to prevent their relationship.<sup>326</sup>

During a medical examination conducted at arrest, Trisha learned that she was eight weeks pregnant with Kamal’s child. Their son, Jai, was born in prison while Trisha awaited trial. In 2010, Trisha and Kamal were convicted of murder and sentenced to death by hanging. Trisha has always asserted her innocence. At trial, despite their opposing defenses, Trisha and Kamal were represented by the same state-appointed lawyer. This conflict of interest jeopardized the fairness of their trial. Amplifying these fair trial concerns, the defendants shared a lawyer on appeal all the way to the Supreme Court of India, which confirmed their death sentences in 2015. The Supreme Court commented on the fact that Trisha, a daughter, who is traditionally supposed to “bear the burden of being the caregiver[s] for her parents, even more than a son,”<sup>327</sup> had instead killed seven members of her family. The Court stated, “[the daughter] is a caregiver and a supporter, a gentle hand and a responsible voice, an embodiment of cherished values of our society and in whom a parent places blind faith and trust.”<sup>328</sup>

Trisha’s son spent his first six years of life in prison with his mother. Jai grew up in an overcrowded, dirty cell with no access to healthy food, clean water, health services, or any schooling. Trisha taught her child herself, as best as she could. She also tutored other prisoners. After Jai turned seven, prison authorities took him away from his mother and placed him into foster care. Today, Jai continues to bear the marks of the deprivation of his early years. He shows signs of trauma and has struggled to catch up in school. After surrendering her child, Trisha fell into a deep depression.

Prison authorities filed a one-page mercy petition on behalf of Trisha, without informing her lawyers. Trisha was unable to consult with her lawyers and was not provided with legal assistance before filing the petition. Mercy was denied.

## Indonesia

Women represent a small fraction of death row prisoners in Indonesia. As of September 2017, there were nine women on death row whose sentences had been finalized,<sup>329</sup> amounting to roughly 6% of all death row prisoners with finalized sentences. Many of their cases are

characterized by coercive relationships with men, often intimate partners, who are sometimes, but not always, prosecuted.<sup>330</sup> Most of these women were convicted together with male co-defendants.<sup>331</sup>

Indonesia is one of a small number of states worldwide that continues to hand down death sentences and carry out executions. It was one of only 23 states that executed in 2016.<sup>332</sup> Although no executions were recorded in 2017, Indonesian courts handed down at least 47 new death sentences.<sup>333</sup> A wide range of crimes are death-eligible in Indonesia, including murder,<sup>334</sup> robbery,<sup>335</sup> drug-related offenses,<sup>336</sup> economic crimes,<sup>337</sup> and terrorism-related offenses;<sup>338</sup> nevertheless, most death sentences are imposed for murder and drug offenses.<sup>339</sup> From 2008 to 2013, the country observed an unofficial moratorium on executions, which ended on March 14, 2013, with the execution of a Malawian national convicted of drug trafficking.<sup>340</sup> Since 2013, Indonesia has executed 23 people by firing squad, two of whom were women.<sup>341</sup> The election of President Joko “Jokowi” Widodo seems to have spurred the upsurge of executions after he repeatedly called for a harsh crackdown on drug dealers and other offenders.<sup>342</sup> Most recently, in July 2016, Indonesia executed four people, all of whom were convicted of drug-related offenses, and three of whom were African nationals.<sup>343</sup> By the end of 2017, at least 262 people were on death row in Indonesia.<sup>344</sup>

Six of nine women on death row in Indonesia were convicted of non-violent drug trafficking offenses.<sup>345</sup> Three of the six were drug mules who were tricked or coerced into smuggling drugs and two more were arrested with their husbands and denied any involvement in their partners’ drug dealing.<sup>346</sup> The remaining three women on death row were sentenced for murder. One of them, who was 17 years old at the time of the offense, was sentenced to death despite testifying that she acted under death threats from her husband. Though Indonesian law generally prohibits the imposition of capital punishment on juveniles, the court treated her as an adult because she was married.<sup>347</sup> She stated clearly during criminal proceeding that she repeatedly rejected her husband’s order to murder a child.<sup>348</sup> In general, the Indonesian criminal justice system fails to take into consideration gender violence and other mitigating evidence to effectively deal with issues of relative culpability, duress, and intent.

Six of nine women on death row in Indonesia were convicted of non-violent drug trafficking offenses.<sup>349</sup>

Women under sentence of death are held together with other female prisoners and suffer from the acute overcrowding in women’s prisons. In Medan Women’s Prison, for instance, 30 inmates live together in a single five-by-six meter cell. In the dry season, cells are overheated and humid, and the plumbing often breaks down, exacerbating the consequences of inadequate hygiene. There is only one toilet per cell. Women who break prison rules, such as the ban on smoking or phones, are punished with solitary confinement. Death-sentenced women reportedly receive the same treatment as other female inmates. The prisoners sometimes have access to a common room with a television, and they can participate in religious activities or vocational courses (such as cooking or painting), which are offered by outside charities. Each prison has a health clinic, but facilities are basic, and they are not always staffed. One woman on death row suffers from diabetes; she reports that the prison refuses to provide her with appropriate food for her condition, and she lacks the means to buy her own food. Most of the prisoners do not receive any mental health services.<sup>350</sup>

#### CASE STUDY: ERIKA

Erika<sup>351</sup> was sentenced to death for killing her eight-year-old daughter. Her male co-accused, Susilo,<sup>352</sup> was a friend of her brother-in-law. The court found that the Erika and Susilo had been having an adulterous affair, and that Susilo had raped Erika’s young daughter twice in the days preceding the crime. According to the judgment, Erika and Susilo, angered by the child’s refusal to bring them water from a well, conspired to kill the girl.

After meeting with Erika in the prison where she is detained today, LBH Masyarakat, an Indonesian non-governmental organization providing legal services to death-sentenced prisoners, uncovered facts that point to a very different series of events. As a mother to six children, Erika worked hard to provide for her family by farming and fishing. After her husband found a job in a neighboring province, she was left to support her children largely on her own. One day, after her husband’s departure, when Erika was alone, Susilo found her in her home and raped her. Some time later, she returned from



working in the rice fields to find that Susilo had stabbed her daughter to death.

Because Susilo had entered Erika's home while her husband was at work, media articles seized on the narrative of a cheating mother who allowed her lover to rape her child and ultimately helped him kill her over a minor act of disobedience. During the trial, the alleged affair was a key part of the prosecution's narrative.

Erika never had a chance to present this exculpatory evidence to the court because she was denied proper legal representation. The court did not hear that she was absent from the scene of the crime, nor did it learn that Susilo had previously raped her. The stigma associated with Erika's alleged offense is so strong that in all the years she has spent in prison (since 2006) Erika has not received a single family visit, nor has she received any financial support.<sup>353</sup>

## Jordan

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There were 16 women on death row in Jordan as of June 2018,<sup>354</sup> representing around 13% of the approximately 120 death row inmates.<sup>355</sup> Jordan halted executions entirely from 2006 to 2013, but then resumed hangings in 2014 in response to rising homicide rates.<sup>356</sup> Jordan's recent upsurge in executions has also coincided with increased terrorist activity in the country. Since 2014, Jordan has hanged 28 people, many of them for terrorism offenses.<sup>357</sup> One of these was a woman, Sajida Al-Rishawi, who was sentenced to death for her involvement in a terrorist attack in Amman in 2005 and was executed in 2015, in apparent retaliation by the Jordanian state for the burning of a Jordanian pilot by ISIS.<sup>358</sup> In March 2017, 15 people were executed on the same day, ten of whom had been convicted of terrorism-related crimes.<sup>359</sup> While a number of capital offenses are punishable by death in Jordan including murder, aggravated robbery, terrorism offenses, drug trafficking, treason, and espionage,<sup>360</sup> most death row inmates have been convicted of murder and terrorism offenses.<sup>361</sup>

There are striking similarities between the cases of women on death row in Jordan. Almost all of them were convicted of killing family members who in traditional families would be expected to wield considerable authority over them, creating the potential for abuse. All but two of the 16 women on death row received a death

sentence for killing their husband or fiancé (nine cases), mother-in-law or stepmother (three cases), or father (two cases).<sup>362</sup> While we have incomplete information for most of these cases, we were able to confirm that at least four of these women killed their husband or father following long-term abuse.<sup>363</sup> A recent addition to death row is a domestic worker from Bangladesh, who received a death sentence in October 2017 for killing her employers.<sup>364</sup> While we know little about her case, these facts recall the pattern of female migrant domestic workers sentenced to death in other Middle Eastern countries, who suffer from intersecting forms of oppression based on class, foreign nationality, precarious immigration status, and gender.<sup>365</sup> All of the women under sentence of death come from poor families, and around half of them received only a primary education.<sup>366</sup>

Almost all women on death row were convicted of killing family members who in traditional families would be expected to wield considerable authority over them, creating the potential for abuse.

Once arrested, women face discrimination in judicial proceedings. Almost all of the women on death row were convicted of murdering a family member, a crime that under the Jordanian Penal Code can result in a reduced sentence if the offender was "defending the family honor."<sup>367</sup> While the law makes no distinction on the basis of gender, in practice this sentence reduction is only extended to male defendants.<sup>368</sup> Additionally, if the defendant committed the offense in a "fit of fury," the sentence for premeditated murder can be reduced from the death penalty to as little as one year's imprisonment.<sup>369</sup> In practice, however, courts only apply this mitigating factor to men. Advocates on the ground explain that judges are hard pressed to accept the reality that women lose their tempers and are capable of acts of violence that contravene gender norms.<sup>370</sup> Moreover, in conservative milieus men control the family's financial resources and women cannot generally gain independent access to them. Because of the stigma associated with capital offenses, particularly in cases where the victim is also a member of the family, women's families often withhold financial assistance. This exacerbates women's difficulties in obtaining effective legal representation.<sup>371</sup>



Critically for death penalty cases, Jordan's tribal reconciliation mechanisms operate with gender bias. Prisoners sentenced to death for murder receive a reprieve if the victim's family grants them forgiveness, generally in exchange for payment. Tribal leadership is more often willing to negotiate, and disposed to mobilize more funds, to secure a pardon for male members sentenced to death.<sup>372</sup> In 2014, when Jordan resumed executions, the relatives of many death row defendants pushed their tribes to reconcile with the victims' families to avoid executions. This led to the commutation of 44 death sentences imposed on men. During the same period, not a single woman benefitted from a family-backed pardon.<sup>373</sup>

Despite recent measures aimed at improving conditions of incarceration, prisons in Jordan still face significant challenges due to overcrowding, lack of medical and health care services, and poor sanitary conditions.<sup>374</sup> Women prisoners are no exception, although conditions for women, who are detained separately, are generally better than those for men.<sup>375</sup> Women under sentence of death sleep in a separate area within women's prisons, but they mingle with the rest of the female prison population during the day.<sup>376</sup> Due to social stigma surrounding their criminal convictions, women on death row rarely receive visits from their families, and these visits are limited to 15–30 minutes.<sup>377</sup> This limits their contact with the outside,<sup>378</sup> including with their children,<sup>379</sup> with devastating consequences for both. Moreover, since executions resumed in 2014, a prison psychologist has found that women on death row manifest increased frustration and depression, and a “lack of attachment to life.”<sup>380</sup>

### CASE STUDY: JANA AND REMAS

Jana and Remas,<sup>381</sup> a mother and daughter, were convicted and sentenced to death in 2014 for the murder of Omar, Jana's husband and Remas's father. The trial court's verdict cast Jana into the stereotypical role of a jealous wife and manipulative mother, setting aside evidence that the deceased had sexually assaulted his daughter. Ahmad, son and brother to Jana and Remas, was convicted together with the other defendants but was spared a death sentence in light of his juvenility at the time of the offense.

According to the trial court's judgment, Jana grew resentful of her husband after he took a second wife. The court wrote that “grudge and hatred began to grow in her

heart,” and seven months after the second wedding, she “used her children” to carry out the murder after convincing them of the necessity of killing their father. Although Jana did not strike any blows, the court found her complicit in the killing and sentenced her to death together with her daughter Remas. In adopting this narrative of marital strife and revenge, the court relied primarily on a written statement from the elderly mother of the deceased, Jana's mother-in-law, who lived in the same building as her son. This key witness did not appear at trial and the defense never had an opportunity to cross-examine her or to challenge her recollection of events.

Meanwhile, the court discounted statements from all three defendants that the deceased had sexually assaulted his daughter Remas. Two other witnesses testified that Jana had confided in them about the sexual assaults prior to the offense. Nevertheless, the court concluded that the defendants had fabricated this allegation in order to protect themselves from the consequences of their crime. The court also appears to have rejected the police's forensic analysis of the alleged murder weapons, which did not match the prosecution's theory.

In the absence of any material evidence, the court's acceptance of the jealous wife motive over the abusive father testimony draws upon stock narratives about how women and men relate to each other in marriage, how much influence mothers wield over their children, and the unreliability of claims of sexual assault. Given that almost all death-sentenced women in Jordan were convicted of killing intimate partners or their family members, the gendered and hierarchical nature of these assumptions is cause for concern.

## Malawi

Until fairly recently, there were four women condemned to death in Malawi, comprising approximately 15% of all death row prisoners.<sup>382</sup> No persons have been executed since 1994,<sup>383</sup> making it a *de facto* abolitionist state. Nevertheless, Malawi courts continue to issue death sentences.<sup>384</sup> At present, there are 15 persons on death row, with the most recent death sentence issued in 2016.<sup>385</sup>

All women on death row had experienced multiple forms of gender-based oppression and some form of mental illness or trauma.

All women previously on death row were sentenced to death for the murder of family members: two for the murder of their husbands, one for the murder of her two children, and one for the murder of her grandchild.<sup>386</sup> These four women had each experienced multiple forms of gender-based oppression and some form of mental illness or trauma. They were victims of domestic violence and emotional abuse by their partners or close family members. Further, they were indigent, meaning that they were unable to afford private counsel to represent them at trial. Three of the four women had never attended school and one had only attended primary school. Two of them were illiterate.<sup>387</sup>

Women in conflict with the law face particular challenges obtaining access to justice and adequate legal representation.<sup>388</sup> Because many are illiterate, they are unable to understand or respond to legal filings without assistance.<sup>389</sup> Women in Malawi are less likely to receive primary or secondary education than men as a result of harmful stereotypes. Whereas boys are encouraged to complete their education before marriage, girls are sometimes coerced into child marriage as a solution to poverty.<sup>390</sup> Poverty, which affects women more often than men, further exacerbates women's ability to receive a fair trial: women must secure one of the country's handful of legal aid attorneys to prepare their defense.<sup>391</sup>

Malawi's recent experience with capital resentencing hearings highlighted the critical role played by defense lawyers in helping courts understand the gendered experiences of female capital defendants. Over a decade ago, in May 2007, the High Court found the mandatory death penalty unconstitutional,<sup>392</sup> granting judges the discretion to apply the death penalty in the case of murder only after consideration of "the manner in which the murder was committed, the means used to commit the offence, the personal circumstance of the victim, the personal circumstances of the accused and what might have motivated the commission of the crime."<sup>393</sup> The Penal Code was updated to reflect this change in 2011.<sup>394</sup> All four women who had been sentenced to death received individualized sentencing hearings, in which for the first time lawyers presented to the court evidence of their indigence, history of abuse, mental illness, rehabilitation, and other mitigating factors. None of the women were resentenced to death or to life in prison.<sup>395</sup>

In the women's section of Zomba prison, where death row inmates are housed, there is little privacy. Small,

windowless cement cells host two to six women at a time, along with their young children up to four years of age.<sup>396</sup> The only ventilation for the closed space is a small hole at the top of the cell door, leading into the hallway. The women sleep with thin mattresses on the floor in the evenings, typically covering the entire floor space. There is a system of electric lights, but frequent power outages prevent regular use. Toilets and showers are located outside the cells; and though the facilities have cement walls, there is no roof, leaving the prisoners exposed to the elements.<sup>397</sup> As women are not permitted to leave their cells from 5 p.m. to 5 a.m., they must share a bucket to relieve themselves during these hours.

Because of overcrowding, women on death row are housed with the general prison population. In general, they receive the same treatment as the other women, with the sole exception of their ineligibility for work release programs. Visits from advocates and family members, attending religious services, and daily socialization among prisoners are all permitted. Physical and mental healthcare is available, but is of low quality. For more complicated cases, women are taken to hospitals or facilities outside of the prison if possible.<sup>398</sup>

### CASE STUDY: ALICE NUNGU

Alice Nungu, a 60-year-old mother of three, was condemned to death for the killing of her husband Donald Phiri in 2003. Alice was a survivor of brutal and systematic domestic violence. Throughout their marriage, Phiri would come home drunk every evening and beat her in front of their children. Though Alice brought the attacks to the attention of community leaders, they did nothing to assist, and the abuse continued. Her husband also infected her with HIV.<sup>399</sup>

One evening, Phiri returned home heavily intoxicated, knocked the bedroom door off its hinges and started to hit Alice as she slept next to her mother. Once she woke, he continued to scream and strike her—and grabbed an axe. Fearing for herself and her mother, Alice wrenched the axe away from him and struck him on the head.<sup>400</sup> He later died of his injuries.

Alice reported the incident to the local police and explained the events that had led to her husband's death. They charged her with murder. Her lawyer never visited her in prison. In November 2003, she was sentenced to death. Her attorney failed to argue that she had acted in

self-defense, which should have absolved her of any culpability.<sup>401</sup> Moreover, her lawyer never presented evidence that her husband had savagely abused her for years preceding the attack. She never had a chance to appeal her sentence, as the state failed to assign her an appellate lawyer. Instead, she remained imprisoned for the next 12 years. Her health slowly worsened without appropriate treatment for her HIV infection. While in prison, she contracted malaria and pneumonia. By 2010, she was emaciated and weak.<sup>402</sup>

In April 2015, the High Court of Malawi ordered Alice's immediate release after lawyers assisted by the Cornell Center on the Death Penalty Worldwide presented evidence of her ill health and history of gender-based violence. Alice died within weeks of her release, with her mother by her side.

## Pakistan

There are currently 33 women on death row in Pakistan, representing less than 1% of all death row inmates.<sup>403</sup> In 2014, Pakistan lifted its seven-year moratorium on executions in response to a militant attack that left 132 schoolchildren dead in Peshawar.<sup>404</sup> Since then, Pakistan has executed 494 people; approximately 5,000 death-sentenced prisoners await execution.<sup>405</sup> Although there are over 20 crimes for which the death penalty can be imposed, including non-lethal crimes such as blasphemy, kidnapping, and drug offenses,<sup>406</sup> women most commonly receive the death penalty for murder, terrorism, and drug trafficking.<sup>407</sup> Women who are members of religious minorities have also been the target of blasphemy prosecutions.<sup>408</sup>

Female inmates on death row are often from lower socio-economic classes, unable to pay for private representation, and mostly illiterate, hindering their ability to advocate on their own behalf.<sup>409</sup> While capital defendants are entitled to counsel, the quality of representation can be poor because legal aid lawyers lack training and shoulder heavy workloads. Advocates believe that greater public investment in indigent public defense services would likely decrease the number of women on death row.<sup>410</sup> Death sentences imposed on women are often reduced on appeal,<sup>411</sup> but women can wait years before their appeals are finalized and decided because of a significant backlog in the courts.<sup>412</sup> The ages of the 33 women on death row

range from 18 to 45. They are detained throughout 12 different prisons in Pakistan.<sup>413</sup>

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Gender bias affects the treatment of women facing capital punishment in various ways. When police investigate the killings of married men, they often consider wives prime suspects even in the absence of reliable evidence.<sup>415</sup> Once in police custody, women are vulnerable to mistreatment, including physical, sexual, and psychological torture.<sup>416</sup> Justice Project Pakistan currently represents a woman who was brutally tortured and then coerced in police custody to provide a false confession, which formed the basis for her conviction. She now faces execution.<sup>417</sup> Furthermore, despite the prevalence of domestic violence, courts do not consider the realities of intimate partner violence in mitigating the culpability of female defendants who are survivors of domestic abuse.<sup>418</sup>

Women's status as caregivers may be considered by courts receiving bail applications. Justice Project Pakistan has documented at least two cases in which the High Courts released a capital defendant on bail on the grounds that she was a mother with young children.<sup>419</sup>

Once in prison, women in death row are housed with the general female inmate population. Conditions of incarceration for women are, in some respects, better than in men's prisons. 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. Female inmates have access to filtered water and better food than men. Up to four inmates share a cell and toilet, affording little privacy.<sup>420</sup> Women have access to medical care on site, or may be transported offsite to a hospital if necessary.<sup>421</sup> Gynecological assessments are now mandatory.<sup>422</sup> Mental health care, however, is deficient. Incarcerated women are neither screened upon intake, nor provided with treatment during the course of their incarceration. In one case, an inmate was only able to get psychiatric treatment after an external organization intervened.<sup>423</sup>

Like all women prisoners, death-sentenced mothers may bring their young children into the prison with them. In the past, at least one woman gave birth and raised her infant on death row.<sup>424</sup> Children receive medical care inside but no educational opportunities. Children may not remain with their mothers after they turn seven, at which time imprisoned mothers lose their children to family outside or foster care.<sup>425</sup> Most women on death row report receiving regular family visits.<sup>426</sup>

### CASE STUDY: KANIZAN BIBI

Kanizan Bibi has been on death row since 1989, when she was only 16-years-old. She has spent the last decade in a psychiatric hospital. In recent years, her health has deteriorated so significantly that her family no longer recognizes her. She cannot care for herself in the most basic ways. She has lost all awareness of her surroundings. Her family and hospital staff confirm that she has not spoken a word since her admission.<sup>427</sup> Although she is formally diagnosed with paranoid schizophrenia,<sup>428</sup> she manifests signs of mental disorder that go far beyond this single diagnosis.

Kanizan comes from a poor family of tenant farmers. She started working in her early teenage years as a nanny in wealthier households. In 1991, Kanizan was convicted and sentenced to death for killing her pregnant employer and her young children. But Kanizan maintains her innocence. At the time of her arrest, she was working for the family as a nanny.<sup>429</sup> Her co-defendant, Khan Muhammad, was the husband and father to the victims. He was also convicted and sentenced to death, and was executed in 2003. The press reported that Kanizan and Muhammad were lovers who together conspired to kill the family,<sup>430</sup> but this account is disputed by Kanizan and her family.

After she was arrested, Kanizan spent 11 grueling days in police custody.<sup>431</sup> Villagers reported hearing cries and screams while she was being questioned in the police station.<sup>432</sup> She was suspended from a fan by a rope and beaten. Police let mice loose in her pants. She was repeatedly electrocuted.<sup>433</sup> She was hospitalized for her injuries, only to be discharged to prison.<sup>434</sup> Kanizan was unable to hire private counsel to defend her against the murder charges.

The central piece of evidence against Kanizan was her confession. Her statement was challenged in court as the

product of torture, but to no avail. Since her incarceration, she has also been evaluated by medical examiners who have found her twice unfit to be executed, as recently as 2015. Yet she remains incarcerated; her conviction and her sentence still stand. Indeed, her plea for clemency was also rejected by the President of Pakistan. Kanizan's case starkly illustrates how poverty, gender bias, state-sponsored torture, and mental illness interact in shaping the realities of women on death row.

## United States of America

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As of October 1, 2017, 54 women were on death row in the United States, accounting for just under 2% of the approximately 2,800 prisoners on death row across the United States.<sup>435</sup> In 2017, the United States was ranked as the eighth-highest global executioner with 23 executions, trailing China and six Middle Eastern countries.<sup>436</sup> It was the only country to carry out executions in the Americas.<sup>437</sup> Since the reinstatement of the death penalty in the U.S. in 1976, 35 states have carried out at least one execution for a total of close to 1,500 executions.<sup>438</sup> Of this number, 16 have been female death row inmates—amounting to roughly 1% of all executions.<sup>439</sup> Six of the 16 women were executed in Texas from 1998–2014.<sup>440</sup> All three of Oklahoma's executions of women took place during 2001.<sup>441</sup> Georgia carried out the most recent execution of a woman on September 30, 2015, when Kelly Gissendaner was put to death by lethal injection.<sup>442</sup>

California, a state that has not executed a man since January 2006 and has never executed a woman, has the largest overall death row and the largest female death row in the U.S. Out of roughly 700 death row inmates in California,<sup>443</sup> 22 are women.<sup>444</sup> Texas has the second-largest female death row, with six inmates.<sup>445</sup> Taken together, southern states—including Texas, Alabama, and Florida—house the majority of women on death row.<sup>446</sup> Ten states have only one woman on death row.<sup>447</sup> Although women represent a small fraction of all inmates in the United States, women's prison populations have been the fastest-growing sector of the incarcerated population since 1978.<sup>448</sup>

Most of the women executed in the U.S. had a history of sexual, physical, and/or child abuse.<sup>449</sup> All 16 women came from a poor background and lacked access to adequate legal representation.<sup>450</sup> Executions of women have been confined to a small number of southern states



that tend to have the highest execution rates overall. Since 1976, only the southern states of North Carolina, Texas, Florida, Arkansas, Oklahoma, Alabama, Virginia, and Georgia have executed women.<sup>451</sup>

In most death penalty cases, the prosecution and the press underscored that the female offender had stepped outside of gender expectations.

All of the women executed in the U.S. were convicted of murder, primarily of one or more persons close to the defendant.<sup>452</sup> Nine out of 16 cases involved the murder of an intimate partner; three cases involved the murder of a child; and three cases the murder of a stranger, one of whom was a police officer.<sup>453</sup> Nearly all of the victims were male.<sup>454</sup> According to Mary Atwell, an expert on women on death row in the U.S., women who kill male victims tend to be perceived as a greater threat to the social order because they were able to exert power over a man.<sup>455</sup> In most cases, the prosecution and the press underscored that the female offender had stepped outside of gender expectations.<sup>456</sup> For instance, one woman executed for killing her husband was seen as an unfaithful wife who wanted to collect his husband's life insurance.<sup>457</sup> Another woman, executed for murdering her husband and son, was given the nickname of "black widow" by her prosecutor.<sup>458</sup> In three cases, the defense lawyers were seeking book deals. In fact, one lawyer, who later confessed that he had no experience on capital defense, provided his services in exchange for the profits of a book about his client.<sup>459</sup> These lawyers' eagerness to capitalize on their clients' plight casts doubt on the sincerity of their motives, while highlighting the notoriety of women who transgress gender norms.

Twelve of the 16 women executed in the United States since 1976 were Caucasian, while four were African-American.<sup>460</sup> Three of these four were convicted of killing African-American victims. The remaining African-American woman and all 12 white women were convicted of killing white victims.<sup>461</sup> This closely parallels the data on race in capital sentencing overall, which shows that the victim's race plays a decisive role in whether or not the death penalty is imposed in homicide cases. Although most homicide victims are African-American, their killers are less likely to be sentenced to death than those who kill Caucasians.<sup>462</sup> Whereas most men on death row are

African-American or Latino, most death-sentenced women are Caucasian.<sup>463</sup> The average age for both women and men is just below 30 years old at the time of the offense for which they are sentenced to death.<sup>464</sup> The average age of women currently on death row is just above 48 years old.<sup>465</sup>

The little information that exists about conditions of confinement for women on death row highlights a dehumanizing penitentiary culture that harms all incarcerated women. In states where only a single woman faces a death penalty, a 2004 study suggests these inmates are housed in solitary confinement.<sup>466</sup> In states like Texas and California, where the populations are larger, women on death row are housed in units. In Texas, the prison housing female death row inmates, Mountain View Unit, has one of the highest rates of sexual abuse<sup>467</sup> and suicide.<sup>468</sup> Women on death row in Texas are not permitted contact visits with anyone.<sup>469</sup> In California, the Central California Women's Facility has been criticized for systematically failing to provide adequate medical care.<sup>470</sup> In Florida, death-sentenced women are held at the Lowell Correctional Institution, where many female inmates have testified to inhumane and demeaning treatment including verbal abuse and physical humiliation. Troubling complaints filed between 2011 and 2015 indicate that male prison guards forced many female inmates to perform sexual acts in exchange for basic necessities such as soap and sanitary pads. Those who refused to comply were harassed and sometimes punished with solitary confinement or the withdrawal of family visitation rights.<sup>471</sup>

#### CASE STUDY: BRENDA ANDREW



Brenda Andrew, born December 16, 1963, is a Caucasian woman sentenced to death in Oklahoma. Until her arrest, she lived in Oklahoma City, where she taught bible study



and cared for her two children, Parker and Tricity, who were fathered by her estranged husband Robert Andrew. In 2004, she and James Pavatt were convicted of the 2001 killing of her husband Robert. At the time of his death, Brenda and her husband were separated, and she was romantically involved with Pavatt. Her case exemplifies how prosecutors deploy, and courts sanction, the use of evidence imbued with gender bias against women.

Throughout Brenda's trial, the prosecution sought to portray her as sexually promiscuous by airing details of her sexual history under the guise of establishing her motive to kill her husband. But the evidence proffered strayed beyond this limited justification. The jury was allowed to hear about Brenda's alleged extra-marital affairs from years before the murder, as well as details about outfits she wore, which were characterized by male witnesses as too tight, too revealing, or otherwise sexually provocative.<sup>472</sup> The trial court also permitted the prosecutor to show the underwear found in the suitcase in her possession after fleeing to Mexico after the homicide, because it showed that she was not behaving as "a grieving widow, but as a free fugitive living large on a Mexico beach."<sup>473</sup> As one Justice of the Court of Criminal Appeals of Oklahoma noted, Brenda was put on trial not only for the murder of her husband but for being "a bad wife, a bad mother, and a bad woman."<sup>474</sup> Her appeal, now pending in the Tenth Circuit, argues that her "trial was rendered fundamentally unfair by the admission of irrelevant and salacious facts about [her] sexual appetites and her past adulterous affairs."<sup>475</sup> In essence, the appellate court must address whether the commentary about her sexuality conflated legal questions of guilt and innocence with notions of chastity and promiscuity, which had the effect of maligning her before the jury, precisely because she was a woman who transgressed social conventions.

Brenda's case underscores the important role courts and civil society can play by monitoring how testimony about defendants' sexual behaviors and other kinds of gendered testimony are used in criminal proceedings, as well as the unique prejudice suffered by female defendants, particularly in the eyes of socially conservative and religious juries.

# Recommendations

Below are key recommendations for stakeholders to address issues affecting women in prison generally and women on death row specifically.

## RECOMMENDATIONS FOR GOVERNMENT LEGISLATORS AND POLICY-MAKERS

- In accordance with international law, eliminate the death penalty for non-violent offenses, particularly for drug offenses and blasphemy, and “crimes of morality” such as adultery or lesbianism.
- Codify gender-specific defenses and mitigation, encompassing women’s experiences of trauma, poverty, child marriage, and gender-based violence.
- Guarantee access to consular assistance for foreign women charged with death-eligible offenses, as required by the Vienna Convention on Consular Relations. This is particularly important in the case of migrant/domestic workers.
- Require that the judiciary be trained on gender-based discrimination, domestic violence, and tactics of coercive control that lead to women committing death-eligible offenses.
- Acknowledge the compounding forms of violence suffered by girls and women—including gender based-violence and early and forced marriage—and implement policies and legislative reforms that prevent the application of the death penalty when these women act against their abusers.
- Ensure that women have access to free and effective legal counsel specialized in capital representation.
- In capital proceedings, make available resources so that defendants can obtain the testimony of experts who are trained on the manifestation and effects of mental illness and intellectual disability in women, including female-specific illnesses that can lead to women’s offending, such as Postpartum Psychosis.
- Address gender-based inequality in legal systems that allow for the payment of restitution to victims’ families. Provide financial resources in cases involving indigent women so that they can participate on an equal basis in restitution practices that may result in forgiveness from victims’ families.

## RECOMMENDATIONS FOR GOVERNMENT LEADERS AND PARDON BOARDS

- Commute the sentences of women convicted and sentenced to death for killing close family members who perpetrated gender-based violence against them.
- Commute the sentences of women convicted and sentenced to death for drug trafficking and other offenses that do not involve the loss of human life. Ensure that women accused of low-level drug trafficking benefit from plea deals similar to those leading trafficking operations, who sometimes receive lesser sentences based on their greater knowledge of the operation and usefulness to the prosecution.

## RECOMMENDATIONS FOR JUDICIARY

- Create and/or access training on gender-based violence and its links with women’s offending.
- Take into account women’s experiences of trauma and gender-based violence at conviction and sentencing.

## RECOMMENDATIONS FOR ATTORNEYS

- Consider and pursue general and gender-specific mitigation for clients and raise discrimination against clients on the basis of their gender as appropriate.
- Consider cultural and gender differences when interviewing clients, especially when eliciting information about potential sexual/gender-based violence.

- Seek professional training and the assistance of qualified experts on the manifestations of mental illness and intellectual disability for women, and seek medical and mental health evaluations of your client, where appropriate.
- Raise countries' international law obligations relating to the treatment of women and children in court submissions, particularly under the ICCPR, CEDAW, and CRC, where appropriate.
- If representing a foreign national, ensure the national is aware of their right to contact their embassy or consulate, and if she so requests, notify the consulate/embassy of her detention. If appropriate, raise the lack of consular assistance in violation of the Vienna Convention on Consular Relations at trial and on appeal.

## RECOMMENDATIONS FOR PRISON AUTHORITIES

- Informed by the Bangkok Rules and the Mandela Rules, adopt gender-sensitive policies in relation to women's detention, ensuring women's safety and security pre-trial, during admission to prison, and while incarcerated.
- Design prison infrastructure that allows for women's specific needs, including privacy.
- Hire and train female prison staff to supervise women.
- House women as geographically close to their homes as possible and encourage family contact.
- House juvenile females separately from adult women, preferably in youth facilities with appropriate care.
- Allow women on death row to take part in education, skills building, and social activities in the prison.
- Forbid the use of solitary confinement for women on death row or the denial of family visits as punishment.
- Train staff to recognize symptoms of mental illness and depression in women on death row.
- Ensure timely access to general and female-specific healthcare and counselling, and ensure women have access to the same preventative screenings as the general population. Ensure menstruating women have access to sanitary products, soap, and water.
- Forbid extended shackling of women on death row, and prohibit under all circumstances shackling during pregnancy, childbirth, and nursing.
- Ensure women have access to dependent children through visitation. Establish appropriate accommodations for women with infants and small children so that women and children can remain together in a secure setting that minimizes trauma to children.
- Ensure appropriate medical care, education, and family contact for children in prison with their mothers.
- Provide transparent information on the number of women on death row, demarcated by age and the offenses for which they are convicted, to enable research on the demographics of women on death row.
- Allow civil society and academic researchers to access women on death row.

## RECOMMENDATIONS FOR CIVIL SOCIETY

- Conduct and publish research on root causes and structural, systemic discrimination against women in society that lead to women's increased likelihood of coming in conflict with the law, particularly in capital cases.
- Monitor government and prison compliance with international human rights standards in relation to women on death row.
- Pressure governments to implement the above recommendations, including by submitting reports on the topic of women in prison and women on death row to U.N. and regional human rights review mechanisms.
- Support family visits to women in prison, including by helping to transport family and children to visit their relatives in prison.

## Appendix: International Treaty Obligations of Profiled Countries

Country	Treaty	Date of Ratification, Accession, or Signature <sup>476</sup> (s)	Vote on U.N. General Assembly's Resolution for a Global Moratorium on the Use of the Death Penalty <sup>477</sup>
India	ICCPR	April 10, 1979	India has voted systematically against the U.N. General Assembly's moratorium resolutions, demonstrating its attachment to the practice.
	CAT	Oct. 14, 1997 (s)	
	CEDAW	Jul. 9, 1993	
	CRC	Dec. 11, 1992	
Indonesia	ICCPR	Feb. 23, 2006	Indonesia has abstained from the last three U.N. General Assembly moratorium resolutions, after voting against the first three resolutions prior to 2010.
	CAT	Oct. 28, 1998	
	CEDAW	Sep. 13, 1984	
	CRC	Sep. 5, 1990	
Jordan	ICCPR	May 28, 1975	Jordan has abstained from all but one of the U.N. General Assembly's moratorium resolutions. It voted against the first resolution in 2007.
	CAT	Nov. 13, 1991	
	CEDAW	Jul. 1, 1992	
	CRC	May 24, 1991	
Malawi	ICCPR	Dec. 22, 1993	Although Malawi has taken no formal steps to abolish the death penalty, it voted in favor of the U.N. General Assembly's moratorium resolution in 2016. Previously, it had abstained from the vote. This may indicate shifting national sentiment, or at least ambivalence, about the legitimacy of capital punishment.
	CAT	Jun. 11, 1996	
	CEDAW	Mar. 12, 1987	
	CRC	Jan. 2, 1991	
	ACHPR	Nov. 17, 1989	
	Protocol to the ACHPR on the Rights of Women in Africa	May 20, 2005	
Pakistan	ICCPR	Jun. 23, 2010	Pakistan has voted systematically against the U.N. General Assembly's moratorium resolutions, demonstrating its attachment to the practice.
	CAT	Jun. 23, 2010	
	CEDAW	Mar. 12, 1996	
	CRC	Nov. 12, 1990	
USA	ICCPR <sup>478</sup>	Jun 8, 1992	The United States has voted systematically against the U.N. General Assembly's moratorium resolutions, demonstrating its attachment to the practice.
	CAT	Oct. 21, 1994	
	CEDAW	Jul. 17, 1980 (s)	
	CRC	Feb. 16, 1995 (s)	

The **INTERNATIONAL COVENANT FOR CIVIL AND POLITICAL RIGHTS (ICCPR)**<sup>479</sup> enshrines in articles 6 and 14 the rights to life and fair trials, respectively, and restricts the imposition of the death penalty to the most “serious crimes.”<sup>480</sup> Further, Article 6 provides that juveniles cannot be sentenced to death and pregnant women cannot be executed.<sup>481</sup>

The **CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)**<sup>482</sup> stipulates States parties’ obligation to prevent torture and ensure that all acts of torture are criminal offenses under their laws.<sup>483</sup> States parties are bound to constantly review their interrogation rules and methods to prevent cases of torture.<sup>484</sup>

The **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**<sup>485</sup> establishes States parties’ obligations to end discrimination against women. State parties are obliged “to accord to women equality with men before the law”<sup>486</sup> and “to establish legal protection of the rights of women on an equal basis with men.”<sup>487</sup>

Pursuant to the **CONVENTION ON THE RIGHTS OF THE CHILD (CRC)**,<sup>488</sup> States parties are obligated to ensure that no child is subjected to torture, capital punishment, or life in prison without the possibility of release.<sup>489</sup>

The **AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (ACHPR)**,<sup>490</sup> a regional treaty, provides in article 4 that “no one may be arbitrarily deprived of the right to life.”<sup>491</sup> The **PROTOCOL TO THE ACHPR ON THE RIGHTS OF WOMEN IN AFRICA**<sup>492</sup> enshrines in article 4 States parties’ obligation “not to carry out death sentences on pregnant or nursing women.”<sup>493</sup>



# Endnotes

## INTRODUCTION: WOMEN ON DEATH ROW, INVISIBLE SUBJECTS OF GENDER DISCRIMINATION

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The portrayal of a woman as ‘good’ or ‘bad’ lies in the ability to align her behaviour with gender norms. If her behaviour (including her crime) can be recuperated back into the norms of femininity, then a lenient response may be available. If, however, her transgressions fall outside of the expected norms, then she is more likely to receive harsh punishment for her crimes.

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## THE ALICE PROJECT

In 2003, Alice Nungu was sentenced to death for defending herself and her mother from a vicious attack by her husband. Alice endured daily beatings throughout her marriage, but on this particular evening the violence escalated when Alice's husband advanced toward her and her aged mother with an axe. Terrified, Alice wrenched away the weapon and fatally struck her attacker. The next morning Alice went to the police to confess what she had done. Instead of compassion, she was met with incredulity and hostility. Charged with murder and too poor to afford effective counsel, Alice was sentenced to death by a court that never heard how her husband had savagely abused her for years, or how she had acted in self-defense. She suffered on death row for the next 12 years, fading from HIV, inhumane living conditions, and lack of food.

In 2015, Alice's case was reheard with the assistance of Cornell Center on the Death Penalty Worldwide. After the court finally heard the evidence that should have prevented her death sentence, it ordered her immediate release. Alice returned to her village to much jubilation. Finally free, she was surrounded by the love and support of her tight-knit community. Better still, her mother was there to greet her. Only weeks later, Alice died, with her mother by her side.

The Alice Project honors Alice and the many other women and girls who have suffered under legal systems blind to the discrimination, violence, and trauma that have marked their lives. It combines research, advocacy, and legal representation for women facing the death penalty to illuminate their unique challenges and draw connections between the causes and consequences of the wrongs they suffer. The Project works with partners around the world to shed light on global trends of discrimination against women that eviscerate the fairness of criminal proceedings against them and compound the inhumanity of their conditions of detention. By telling women's individual stories, the Project seeks to challenge biased practices, obtain judicial acknowledgment and redress, and strengthen laws that recognize and prevent future injustice.



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