



**WOMEN**  
SENTENCED TO DEATH:  
AN INVISIBLE REALITY

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19<sup>th</sup> WORLD DAY AGAINST THE DEATH PENALTY

# ADDRESSING THE GENDER DIMENSION OF THE DEATH PENALTY: COACTION BETWEEN PARLIAMENTARIANS AND CIVIL SOCIETY

## 1. Introduction: Gender-based discrimination at the core of the imposition of the death penalty

Despite the fact that women only represent about 5% of all death row inmates,<sup>1</sup> it is essential to take measures to guarantee that women do not face gender discrimination in the application of the death penalty and that they are provided with a fair treatment in full respect of international human rights.

Women serving death sentences are at risk of being sexually harassed by male prison guards and do not have access to adequate healthcare and sanitary hygiene products.<sup>2</sup> Most women sentenced to the death penalty are facing socio-economic precarity, have a history of being harassed, physical and sexual abuse<sup>3</sup>, and are isolated in situations they cannot escape, including in the context of domestic, intimate and/or sexual violence.<sup>4</sup> Women offenders often find themselves without the resources to have adequate legal representation, or without the knowledge to access the legal aid, may not fully understand the legal system, and may not have the appropriate support network.<sup>5</sup>

The reasons which place women offenders on death row are often deeply rooted in gender-based discrimination and fit within a broader, and tolerated, pattern of violence against women. Women are judged not only on the basis of their crime, but also for having betrayed traditional gender roles. Consequently, the consideration of their sentences tends to be contingent on their conformity with their assigned roles in society. This leads to a huge inconsistency in the imposition of death penalties on women, particularly in how intersecting forms of discrimination impact women in the judicial system.<sup>6</sup> *For instance:*

- In the **United States (US) State of Oklahoma**, Wanda Jean Allen, was black, gay and had cognitive deficiencies and was executed in 2001 for murdering her longtime girlfriend,. The prosecutor in Allen's case 'argued very clearly that she shouldn't be treated as a woman because she was a lesbian and she was "the male" in the relationship."
- In **Indonesia**, there is a case of a mother convicted of murdering her 8-year-old daughter with a male co-defendant, with whom she had an affair. The daughter had been subjected to numerous rapes by

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<sup>1</sup> Penal Reform International and Cornell Center on the Death Penalty Worldwide, "[A factsheet on Prison Conditions for Women Facing the Death Penalty](#)", October 2018, p. 1.

<sup>2</sup> *Ibid.*, p. 33.

<sup>3</sup> American Civil Liberties Union, "[The Forgotten Population: A Look at Death Row in the United States Through the Experiences of Women](#)", 2004, p. 11.

<sup>4</sup> Cornell Center on the Death Penalty Worldwide, "[Judged for More Than Her Crime: A Global Study of Women Facing the Death Penalty](#)", September 2018, p. 11, 17.

<sup>5</sup> *Ibid.*, pp. 30-31.

<sup>6</sup> Victor L. Streib, "Rare & Inconsistent: The Death Penalty for Women", 33 *Fordham Urb. L.J.* 609 (2006), p. 118.

the male co-defendant while her father, the defendant's husband, was at work. During the trial, the situation was presented as an adulterous affair, presenting the defendant as a cheating mother who allowed her lover to rape her daughter and ultimately helped him kill her. She never had a chance to present the exculpatory evidence because she was denied proper legal representation. The stigma associated with her alleged offense has resulted in her not having received any family visit, nor any financial support.<sup>7</sup>

Women are more often sentenced to the death penalty for charges which are [deeply entrenched in patriarchal norms](#), including for adultery and which do not meet the threshold of "the most serious crimes"<sup>8</sup>, including drug-related offences.<sup>9</sup> In addition, women sentenced to death will often be accused of murder or manslaughter in the context of prolonged domestic, intimate and/or sexual abuse.<sup>10</sup> This stems from the omission to consider a history of domestic or sexual abuse as a [mitigating factor](#) by most legislations or placing hard-to-prove legal requirements for the "self-defense" claim to be effective.<sup>11</sup>

## 2. What can Parliamentarians do to address Women and the Death Penalty?

Parliamentarians, in their roles as the lawmakers, are the ones best placed to promote gender equality in all areas of their work and propose gender-sensitive legislation. **Lobbying or advocating with parliamentarians is a concrete step towards changing country or regional policy.** The death penalty in many countries is provided for in law, the constitution and/or in a country's penal code. As such, in retentionist countries, it is up to parliamentarians to address, modify and eliminate the legislation to pave the way towards abolition.

**Researching the constitution of the country** (or statute or founding treaty for regional organizations), as well as the **Parliament's rules of procedure**, is a crucial first step. For example, it is essential to know whether parliamentarians can introduce private members' bills on any topic (often, it can only be the case for bills that have no budgetary implications), or whether they can vote to ratify an international agreement. Being able to **give clear and concrete examples of actions** parliamentarians can take to further the abolitionist movement is key to mobilizing members of parliament (MPs) to take such steps. In addition, it may also be the case that MPs themselves are not aware of some of the prerogatives they hold or actions they can take, especially in fragile democracies or non-democratic systems, where MPs may not have had much occasion to exercise initiative or oversight.

### A. Address gender-based discrimination

As the first step, the Parliamentarians can address gender-related discrimination, by:

1. **Ensuring that their legal framework is gender-sensitive** and does not perpetuate gender-based discrimination affecting women sentenced to the death penalty.

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<sup>7</sup> Cornell Center on the Death Penalty Worldwide, "[Judged for More Than Her Crime: A Global Study of Women Facing the Death Penalty](#)", September 2018, p. 27.

<sup>8</sup> As defined by the UN's Office of the High Commissioner on Human Rights, safeguards guaranteeing protection of the rights of those facing the death penalty, the most serious crimes are "understood that their scope should not go beyond intention crimes with lethal or other extremely grave consequences."

<sup>9</sup> L. Harry, "[Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia](#)" *Laws* 10(1):9, 2021.

<sup>10</sup> Linklaters, "[Women who kill in response to domestic violence: How do criminal justice systems respond?](#)", 2016, p. 5.

<sup>11</sup> Such as demonstrating that the victim "reasonably perceived a risk of a bodily harm or death" or "acted to repel an on-going attack", see: Cornell Center on the Death Penalty Worldwide, "[Judged for More Than Her Crime: A Global Study of Women Facing the Death Penalty](#)", September 2018, p. 11.

2. **Propose protective measures**, rather than coercive ones, to individuals who are constrained into drug trade and other drug-related crimes. Such measures could include a court order to undertake awareness courses, counselling, therapy, treatment, rehabilitation, social integration, or educative seminars.
3. **Overcoming gender-biases in judicial institutions**, encourage and implement mandatory training programmes for judges that are gender sensitive, which consider the vulnerability of women and girls, and increase their awareness of crimes committed in the context of domestic, intimate and/or sexual violence.
4. **Bringing a case of a woman who has been sentenced to death** to a parliamentarian to highlight the ongoing violations against women in the judicial system. Parliamentarians can use such example in their anti- death penalty efforts, as for instance, in the USA sending a [letter to President Biden](#), urging his support for the legislation to abolish the death penalty and to commute the death sentences of all 49 people remaining on federal death row, Members of Congress highlighted the case of Lisa Montgomery- a woman who was executed in January 2021 despite suffering from mental illness and having been subjected to physical, emotional and sexual abuse as a child- as an example of the intolerable injustice engendered by the federal death penalty.
5. **Promoting gender equality in access to justice**, including through the development of [mentoring programmes addressed to legal professional](#).
6. **Amending or adapting the law to allow offender to present evidence of history of abuse** before the court and ensure that the law explicitly allows judges to consider prolonged intimate, domestic and/or sexual violence as a mitigating factor or partial/full defence (for example, it can be used to establish self-defence, provocation, temporary insanity or any other defence). This has to be coupled with effective measures and awareness to ensure that such defence is taken into consideration properly.
7. **Proposing a budget to support the collection of sex-disaggregated data** on women and men to increase the understanding of the disproportionate impact the capital offence has on migrant women and women coming from socio-economic precarity.
8. **Removing or amending all discriminatory laws** which foster gender-based discrimination, including divorce act prohibiting women to get a divorce, even in the context of domestic, intimate and/or sexual violence, or criminal laws tolerating physical violence against women and girls when committed by their husbands, brothers, fathers or other “figures of authority”.
9. **Creating a national commission or ombudsperson** to ensure that prison facilities are safe for women and offer healthcare services that are appropriate for women, including hygiene products.
10. **Ensuring that women have access to free and legal counsel** as well as to interpretation services.
11. **Encouraging Parliamentarians who visit prisons** to meet and talk with women sentenced to death to verify that the prison conditions are in line with international human rights.

## B. Act towards the full abolition and human rights compliance

As for the death penalty in general, Parliamentarians can:

1. **Introduce a Bill to remove the death penalty** for all offences, but importantly, the offences which do not amount to “intentional killing”, including adultery, or drug-related offences. This can be done through (i) a clause in the national constitution guaranteeing the right to life in absolute terms; (ii) legislation proscribing the death penalty as a permissible sanction; or (iii) subscribing to regional and international human rights instruments requiring the abolition of the death penalty and afterwards aligning municipal law to those instruments.
2. **Ask their governments to establish an immediate moratorium** on the use of the death penalty.
3. **Remove from national law any death penalty provisions which are in breach of international human rights** hard or soft law, such as:

- its mandatory imposition to all crimes<sup>12</sup>;
  - its imposition for crimes which do not meet the threshold of “most serious crimes”<sup>13</sup>;
  - its imposition for crimes committed by persons below 18 years<sup>14</sup>, the application of the death penalty on pregnant<sup>15</sup> or nursing women<sup>16</sup>, or people with mental or intellectual disabilities<sup>17</sup>, or the elderly.<sup>18</sup>
4. **Encourage ratification**, without reservations, of the International Covenant on Civil and Political Rights (ICCPR), and its Second Optional Protocol, aiming at the abolition of the death penalty;
  5. **Ensure that trials for crimes carrying the death penalty comply** with internationally recognized standards for fair trial.
  6. **Lead and promote advocacy campaigns** to encourage other States to do any of the above.

### 3. Advocacy of Civil Society towards Parliamentarians

In order to encourage Parliamentarians to promote gender equality and the abolition of the death penalty, civil society can implement several advocacy strategies.

#### A. Mapping and Contacting Parliamentarians<sup>19</sup>

A good practice in knowing whom to contact regarding women and the death penalty is **creating a map of parliamentarians**. To create a political mapping, it is helpful to first **lay out which qualities or criteria are relevant** in identifying which members of parliament should be approached. These criteria will differ depending on the context; in some places, knowing the religion of an MP can indicate whether they are more inclined to be abolitionist. In others, it can be useful to know from which region and constituency they yield. The relevant information necessarily depends on a country’s or region’s specific political and societal system. For example, in some countries, parliamentarians are compelled to follow party lines, which makes approaching the party leaders all the more important, while in others, it can be useful to find a parliamentarian of a specific region to support abolition.

It is relevant to focus not only on national Parliaments, but also to **engage with a regional one** which has an important political impact.

- For instance, in a [Joint Resolution on the Blasphemy Law in Pakistan](#), which has led to the disproportionate sentencing of women on blasphemy charges (including the arrest of Asia Bibi after her neighbors complained that she had made derogatory remarks about the Islam's prophet), the **European Parliament** called for the universal abolition of the death penalty and urged the Pakistani authorities to commute sentences of all individuals facing the death penalty to ensure the respect of their right to a fair trial.

<sup>12</sup> UN Human Rights Council, A/HRC/39/19, para. 24; UN Economic and Social Council E/2015/49, para. 63; UN General Assembly A/67/275, para. 67; Communications CCPR/C/GHA/CO/1, paras. 19–20; and CCPR/C/98/D/1520/2006, para. 6.3.

<sup>13</sup> UN Economic and Social Council, E/2015/49, paras. 62; 66–68.

<sup>14</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, UN, Treaty Series, vol. 999, p. 171 (ICCPR), Article 6; UN Commission on Human Rights, Convention on the Rights of the Child, 7 March 1990, E/CN.4/RES/1990/74, Article 37.

<sup>15</sup> ICCPR, Article 6.

<sup>16</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003, Article 4.

<sup>17</sup> See UN Economic and Social Council resolutions 1984/50, para. 3; and 1989/64, para. 1(d); report E/2015/49, para. 85–86; Communication CCPR/C/74/D/684/1996; UN General Assembly reports A/67/279, para. 58 and A/HRC/36/26, paras. 49–52.

<sup>18</sup> See UN Economic and Social Council resolutions 1989/64, para. 1(a); report E/2015/49, para. 84; UN General Assembly report A/67/279, para. 58.

<sup>19</sup> Excerpts taken from: World Coalition Against the Death Penalty, in partnership with Parliamentarians for Global Action, “How to work with Parliamentarians for the Abolition of the Death Penalty”, 2021.

It is important to identify **the most relevant Parliamentary committees, or groupings:**

- The committee on legislation, justice, human rights and **committees focusing on women's rights and discrimination**, will be the most obvious targets to promote the abolition of the death penalty. In case there is no parliamentary committee focusing on women's rights, it may be important to identify **parliamentarians who have a track record of promoting women's rights**.
- In some countries, there are **coalitions of Women MPs focused on addressing women's rights**, e.g.: the [Coalition of Women Parliamentarians from Arab Countries to Combat Violence against Women](#), comprised of female Parliamentarians from 13 Arab countries.
- In some countries, there exist **formalised cross- party groupings of politicians who actively oppose the death penalty**, for instance: [Australian Parliamentarians Against the Death Penalty](#) or the [Swiss Parliament Death Penalty Group](#).
- Some also establish a **process for receiving individual case information from civil society**. For example, the Swiss Parliament Death Penalty Group receives the [Amnesty International Urgent Actions](#) and makes regular interventions with country's political representatives based on these.<sup>20</sup> Such process could be an important tool to bring to the MPs' attention the cases of women on death row.

As such, NGOs could as a part of their advocacy:

- **Send out** (on behalf of one or more NGOs) **and open letter** to an individual MPs, or group of MPs, political parties **or congratulating them** on introducing private bills on abolishing the death penalty, reducing the scope of its application, reducing the gender discrimination, or on taking any other action to improve the human rights standards of the women on death row;
- **Broadcast the message widely** regarding women and the death penalty via radio, television, newspapers, journals or social media in the form of documentaries or reports or public statements, blogs or leaflets;
- **Organize or attend conferences, workshops or other events where MPs are invited** and use that opportunity to present the organization and/or make a statement; and
- **Attend rallies organized by parliamentarians or political parties** and use that opportunity to call their attention to the topic.

It can also be useful to reach out to MPs on an **individual basis**. To do so, the NGOs can:

- **Reach out to them via social media** if they seem to actively use them;
- **Visit their constituency office** during the timeslots reserved for unscheduled visits;
- **Schedule a formal meeting** (via email or phone).

## B. Other useful means of advocacy<sup>21</sup>

In addition to the above methods, it can be crucial to pair with other entities to increase the impact of the message and the outreach.

- **Media engagement** has strong potential for influencing Parliamentarians. Media releases, background briefings, opinion pieces and featured articles can all help to put MPs, as well as other government officials, under pressure regarding its position on the death penalty.
- **Reaching out** to groups, organizations and individuals who work together on common concerns about human rights and in particular, women's rights.

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<sup>20</sup> The Parliament of the Commonwealth of Australia, "[A world without the death penalty: Australia's Advocacy for the Abolition of the Death Penalty](#)", 2016, p. 158.

<sup>21</sup> Excerpts taken from: Amnesty International, "Advocacy toolkit: Abolition of the Death Penalty in West Africa", 2016, p. 22.

- **Engaging Experts:** Academics, prosecutors, lawyers, prison service officials and other experts on death penalty and women’s rights issues, including religious and community leaders and former government representatives, may all have the ability to influence Parliamentarians/ state officials. Examples of engagement could include organizing a photo exhibition in the high court to highlight the experience of women on death row, and inviting forensic specialists to attend, to create opportunities for them to speak to key advocacy targets.<sup>22</sup>

### C. Examples of synergy between Parliamentarians with Civil Society

Parliamentarians should be opened to listen to civil society’s arguments and should not hesitate to participate to advocacy campaigns and activities. Examples of best practices include:

- **Pakistan:** The Executive Director of Alliance Defending Freedom International, human rights organisation advocating for religious freedom, organised a signature of [an open letter to the Pakistani Prime Minister](#) by 230 Parliamentarians worldwide. They urged the government to secure safe passage from the country for Asia Bibi, who had her death sentence for blasphemy charges overturned by the Supreme Court. As a result of a political deal, her decision was being reviewed, putting her effectively back on death row. And even if released, she was not allowed to leave the country, which would have left her vulnerable to mob violence. Two months later, in January 2019, Pakistan's Supreme Court [upheld the acquittal and ruled that she was free to leave Pakistan](#), where she was facing death threats. She has been granted asylum in Canada where she has moved with her family.
- **Sierra Leone:** On March 2021, The Death Penalty Project and the Sierra Leonean women’s rights group AdvocAid, made a presentation before President Bio, where they most notably stressed the adverse impact the death penalty had on women and girls accused of murdering an abuser. Only four months later, on 23 July 2021, the Parliament of Sierra Leone [voted unanimously](#) to abolish the capital punishment.
- **Sudan:** Following strong advocacy work led by local NGOs, the Sudanese transitional government [passed a bill into law abolishing the death penalty for the crime of “apostasy”](#); a common reason why women are being sentenced to the death penalty. This was notably the case of Meriam Ibrahim who was sentenced in 2014 to the death penalty under Sudan’s Sharia law when she married a Christian man and refused to give up her Christian faith.
- **UN:** For the first time, the 2020 [UN resolution calling for a moratorium on the use of the death penalty](#) explicitly noted the “discriminatory application of the death penalty to women” [based on](#) reports published by the UN Secretary-General and the inputs shared by civil society organizations.

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<sup>22</sup> Amnesty International, “Advocacy toolkit: Abolition of the Death Penalty in West Africa”, 2016, p.22.