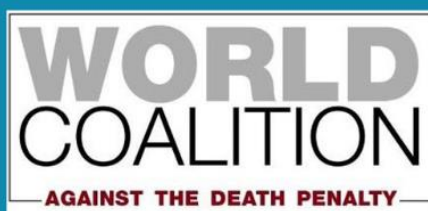




How to insert gender issues in abolitionist advocacy?



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**World Coalition Against the Death Penalty
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Introductory remarks

This tool was developed by the **World Coalition Against the Death Penalty** (World Coalition) in partnership with **the Advocates for Human Rights (TAHR)**, after noting the limited integration of gender issues into the abolitionist advocacy of the World Coalition's member organizations. This tool has also been edited and enriched by the World Coalition's Gender Working Group.

As part of the "Leave No Woman Behind on Death Row" project, this tool aims to assist World Coalition members and partners in implementing **gender-sensitive abolitionist advocacy**.

The World Coalition believes in the importance of making gender and intersectional discrimination in the judicial process leading to the death penalty more visible. Although women currently represent less than 5% of the world's death row population, analysis of their profiles, backgrounds, and the crimes for which they have been sentenced to death reveals significant gender bias in the criminal justice process as it relates to capital punishment. Women are exposed to intersectional discrimination throughout the judicial process leading to a sentence of death as well as during their imprisonment waiting for execution. Choosing to integrate gender issues and intersectional discrimination in the abolitionist struggle is a necessary step towards a complete and inclusive human rights-based approach to capital punishment. This approach also provides an additional lens to highlight the discriminatory, inhumane, and unjust nature of the death penalty and call for its universal abolition.

In this document, intended to be a practical tool, guidance is provided on **how to incorporate gender-specific recommendations into abolitionist advocacy with human rights bodies**. This tool focuses recommendations made by civil society organizations (CSOs) to international and regional human rights bodies, intended to encourage national authorities to act in a certain way. Human rights mechanisms and bodies serve as crucial actors in legitimizing and supporting CSOs work on the ground. A recommendation made by a CSO can, in turn, be accepted by a human rights special mechanism and be transformed into an official recommendation to the State. From there, CSOs can continue to use this official recommendation in their national advocacy to strengthen their claim and position, fulfilling a virtuous circle in advocacy work.

In this document, the recommendations made are done pending full abolition of the death penalty. They are seen as transitional steps towards full abolition of the death penalty in law and in practice.

This tool is divided into two sections. The first part focuses on how to increase visibility of the discrimination faced by women in the judicial process leading to the death penalty. The second part focuses on the discrimination faced by LGBTQIA+ people during the same judicial process. In both sections, definitions are provided as well as background information in order to understand the issues at stake in each of the themes.

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I. Key recommendation to insert the issue of women and the death penalty

Reminder of the key pointers for making visible the specific intersectional discrimination women on death row experience:

- Always disaggregate data by sex, gender, age, social class, family status, disability, and reason for conviction when referring to people on death row.
- Make visible gender bias in the use of death penalty by providing information about discrimination faced by women at all stages of the criminal justice process: investigation (potential bias by law enforcement and communities), trial (regarding barriers to accessing a fair trial), sentencing (when gender mitigating factors are not considered such as a background of gender-based violence), etc.
- **Insert specific recommendations related to women in any abolitionist advocacy** (suggestions can be found in this document).
 - The recommendations in **bold** are the priority recommendations to be used in the shortest documents, like the 1 pager.
 - If the target country has a high rate of death sentences for drug trafficking, insert specific recommendations about women and drug trafficking.
 - Recommendations must be adapted according to the available information of the situation of women on death row in the target country.

1. General information on women and the death penalty

Definitions

- **Women** — Women refers to cisgender women (whose gender identity corresponds with their gender assigned at birth) and transgender women (whose gender identity is different from their gender assigned at birth)
- **Sex** — Classification of individuals on the basis of biological and physiological sex characteristics (such as internal and external genitalia and sex organs). Sex is assigned at birth based on internal and external anatomical characteristics and recorded on the birth certificate¹. In most countries, sex is based on a binary vision which excludes intersex people (see definition below).
- **Gender** — Refers to the associated sociocultural attribution of roles, behaviors, activities and identities associated with men, women, girls, boys, and persons of other genders, as well as the relations between women, men, and persons of other genders. More generally, gender refers to characteristics that society assigns to men and women, girls and boys, and persons of other genders. It differs from “sex” (see this definition) as gender refers to characteristics that are socially constructed rather than determined by physical attributes, varies according to context, and changes over time. The social construction of gender defines what is expected and valued for men, women, and persons of other genders, in a specific context².
- **Gender-based discrimination** — Any distinction, exclusion, or restriction with respect to a person or group of persons, based on gender, that “has the effect or purpose of impairing, or nullifying the recognition, enjoyment, or exercise”³ of human rights of that person or group of

1 ILGA Europe, Glossary, <https://www.ilga-europe.org/about-us/who-we-are/glossary/>

2 United Nations Women, Concepts and Definition, available at: <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

3 The definition of gender-based discrimination proposed in this document is based on the definition of discrimination against women proposed by the United Nations General Assembly. See : United Nations General Assembly, UN Convention on the

persons. This includes discrimination based on gender, gender expression, gender identity, or perceived gender. Gender-based discrimination can manifest itself in many ways, both subtle and overt⁴. In capital punishment cases, individuals on death row face various forms of intersectional and gender discrimination. For example, among other things, women and transgender persons are frequently denied their right to a fair trial, their experiences of gender-based violence are not recognized as mitigating circumstance, and, once on death row, their specific needs are not recognized.⁵

- **Gender-based violence** — Violence directed towards a person based on their gender, gender expression, gender identity, or perceived gender, which is often grounded in unequal power relationships. It encompasses physical, psychological, emotional, administrative, economic, sexual, verbal, and economic harm, and it includes threats and coercion. As most victims of gender-based violence are women and girls, the expression “gender-based violence” is often utilized to refer to violence against women. However, all genders can be subject to gender-based violence. Using the “gender-based” terminology highlights the fact that many forms of violence against women are rooted in power inequalities between women and men⁶. The term is also used to describe violence against LGBTQIA+ individuals(see this definition), when referencing violence related to norms of masculinity/femininity and/or gender norms⁷. Indeed, the most prevalent crime for which women are sentenced to death is murder, often of close family members. Most of the time, the courts do not take into account gender-related mitigating circumstances (see definition below)⁸.
- **Intersectionality** — A concept that recognizes that structural discrimination, for example, based on sex, gender, race, class, caste, or another identity, does not operate in isolation.⁹ As individuals may suffer from one or more types of discrimination at the same time, an intersectional approach allows for a better understanding of the nature and form of discrimination encountered by a person. The Committee on the Elimination of Discrimination against Women has recognized that “the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”¹⁰ The concept of intersectionality is particularly useful in the analysis of the profiles of women sentenced to death because the majority are from ethnic and racial minorities, are non-literate, and have intellectual and/or psychological disabilities and a large proportion has experienced gender-based violence. In some regions, such as Gulf

Elimination of All Forms of Discrimination against Women (CEDAW), (18 December 1979), A/RES/34/180, Art. 1, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

4 World Coalition Against the Death Penalty, Leaflet World Day Against the Death Penalty 2021, (October 2021), available at: <https://worldcoalition.org/wp-content/uploads/2021/06/BROCHURE-WORLD-DAY-2021-EN-1.pdf>

5 Cornell Center on the Death Penalty Worldwide, Judged For More Than Her Crime: A Global Overview of Women Facing the Death Penalty, (September 2018), available at: <https://worldcoalition.org/document/judged-for-more-than-her-crime-a-global-overview-of-women-facing-the-death-penalty/>

6 European Institute for Gender Equality, What is gender-based violence? , <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

7 United Nations Women, Types of violence against women and girls, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>

8 Ibid.

9 World Coalition Against the Death Penalty, Leaflet for World Day Against the Death Penalty 2021, (2021), available at: <https://worldcoalition.org/document/leaflet-en-2021-world-day-against-the-death-penalty/>

10 United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, (16 December 2010), CEDAW/C/GC/28, available at: <https://www.refworld.org/docid/4d467ea72.html>

and Southeast Asia states, the majority of those sentenced to death are migrants working as domestic workers¹¹. Similarly, most men sentenced to death come from ethnic and racial minorities and socially disadvantaged backgrounds.¹²

General information

- Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) of the United Nations, restricts the use of the death penalty to only the “most serious crimes,” which has been interpreted to mean only “intentional killing.”
- Even if there is no exact data on the number of women on death row, women represent less than 5% of the world’s death row population. In 2018, it was estimate that at least 500 women where on death rows around the world.¹³
- Women are facing intersecting forms of discrimination based on gender stereotyping, stigmatization, harmful and patriarchal cultural norms, and gender-based violence, all of which negatively impact women's ability to access justice on an equal basis with men. Youth, forced and/or child marriage, mental illness or intellectual disability, migrant worker status, poverty, race and ethnicity all increase a woman's risk of being sentenced to death. Many women on death row fall into more than one of these categories, compounding their vulnerability¹⁴.
- The Special Rapporteur on extrajudicial, summary, or arbitrary executions has noted that a gender-sensitive approach to the right to life requires consideration of the impact of gender norms, identity and expression in intersection with other identity markers¹⁵.
- In its resolution 75/183 on a moratorium on the application of the death penalty, the General Assembly of the United Nations noted with deep concern the discriminatory application of the death penalty to women and called upon all States to ensure the elimination of discrimination in the application of the death penalty¹⁶.
- Gender-based bias permeates criminal legal systems, manifesting itself in the investigative stage by law enforcement biases; at the trial stage, in which a fair trial may be unavailable for women facing harsh socio-economic deprivation and little access to education; and in sentencing, when women defendants are sentenced to death without the weight of patriarchy on their criminal conduct being taken into account as a mitigating factor¹⁷. Also, in general, women's trials are also longer than men's.
- When women are perceived to be the victim, or when their behaviors align with gender norms, such as the caregiver, they may benefit from a more lenient sentence. In contrast, women who are perceived to breach gender norms, such as when the woman is the criminal or identified

11 Cornell Center on the Death Penalty Worldwide, *Judged For More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), available at: <https://worldcoalition.org/document/judged-for-more-than-her-crime-a-global-overview-of-women-facing-the-death-penalty/>

12 Bright, S, "Imposition of the death penalty upon the poor, racial minorities, the intellectually disabled and the mentally ill." *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, edited by Ivan Šimonović, UN Office of the High Commissioner for Human Rights (2014): 99-113.

13 Cornell Center on the Death Penalty Worldwide, *Judged for more than her crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), p 4, available at: <https://worldcoalition.org/document/judged-for-more-than-her-crime-a-global-overview-of-women-facing-the-death-penalty/> [accessed 28 November 2022]

14 *Ibid.*, p 8.

15 Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, (June 2017), U.N.Doc. A/HRC/35/23, para. 96, available at: [1709011 \(un.org\)](https://www.un.org/doc/1709011/un.org) [accessed 28 November 2022]

16 UN General Assembly, Resolution 75/182, (December 2020), U.N.Doc A/RES/75/183, available at: <https://daccess-ods.un.org/tmp/4937811.79189682.html>

17 *Ibid.*

as violent, « bad mother », a « witch », etc, are more likely to receive a harsher punishment than men accused of similar offenses.¹⁸

- The first reason for women to be on the death row is for the crime of murder. « Many of these crimes involve murders of close family members in a context of gender-based violence »¹⁹, including physical and sexual violence. Yet as the Office of the UN High Commissioner for Human Rights has noted, it is « extremely rare » for domestic abuse to be considered a mitigating factor in sentencing²⁰.
- The second most common reason for women to be on the death row is for the crime of drug offense, particularly in Asia and the Middle East. Women tend to engage in drug smuggling due to economic and social marginalization. These convictions are usually for relatively minor offenses, committed by women of economically deprived backgrounds²¹.
- 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 numbers²².
- Adultery is another offense for which women are disproportionately sentenced to death. In some sharia jurisdictions, offenses against sexual morality, or *zina* - illicit sexual relations outside of marriage - is a capital crime for a married person and is enforced in a discriminatory manner against women²³.
- Training on gender-based discrimination and violence, pathways to crime, and gender-sensitive mitigation is not systematic within the criminal justice system. This can be identified as one of the factors preventing the consideration of mitigating factors in sentencing.
- The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Sanctions for Women Offenders ("Bangkok Rules") adopted in 2010 is a set of 70 rules focused on the treatment of women offenders and prisoners, considering their specific characteristics and needs.
- The 2015 revisions to the Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules")²⁴ recognize women's unique needs.

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

19 *Ibid.*, p 11.

20 U.N. Office of the High Commissioner for Human Rights, *Death penalty disproportionately affects the poor, U.N. rights experts warn*, (October 2017), available at: <https://www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn?LangID=E&NewsID=22208> [accessed 28 November 2022]

21 Cornell Center on the Death Penalty Worldwide, *Judged for more than her crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), p 12, available at: <https://worldcoalition.org/document/judged-for-more-than-her-crime-a-global-overview-of-women-facing-the-death-penalty/> [accessed 28 November 2022]

22 *Ibid.* p 17.

23 *Ibid.* p 13.

24 UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175*, available at: <https://www.refworld.org/docid/5698a3a44.html> [accessed 30 November 2022]

2. Standard recommendations for retentionist or abolitionist in practice countries where women are on death row

Standard recommendations:

General recommendations:

- Eliminate the death penalty for offenses that do not meet the threshold of the « most serious crimes » under international law and standards, particularly for non-violent offenses. These include convictions for drug offenses, blasphemy, witchcraft, and « crimes of morality », such as adultery or lesbianism;²⁵
- Remove mandatory sentencing regimes so that judges may individualize sentencing and courts may properly consider mitigation evidence for every woman charged with a capital offense, and order resentencing of all women sentenced to death without full consideration of mitigating circumstances;²⁶
- **Ensure that the criminal justice system takes full account of any mitigating factors related to women's backgrounds, including evidence of trauma, economic pressures, child marriage, domestic and gender-based violence, as well as psycho-social and intellectual disabilities;**
- **Promote mandatory training on gender-based discrimination and violence, pathways to crime, and gender-sensitive mitigation within the prison and judicial administrations;**
- Recognize the aggravated forms of violence experienced by girls and women, such as gender-based violence, including domestic 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;
- Commute the sentences of women sentenced to death for killing close family members who perpetrated gender-based violence including domestic violence, against them and for women sentenced to death for drug trafficking and other offenses that do not involve the loss of human life;
- **Ensure publicly available disaggregated data on people sentenced to death by age, age of dependent children (if any), sex, gender, nationality, ethnic group, disability, crime(s) of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row;**
- Ensure that all those facing the death penalty have access to free and effective legal representation by counsel with experience representing individuals charged with capital offenses and who are trained to recognize and bring forward mitigating factors, including those linked to gender-based discrimination and violence;
- Reconsider the sentences of persons who did not receive effective legal representation at trial ;
- Increase the number of women involved in decision-making positions in the justice system, including judges, prosecutors, and court administrators;
- Ensure that women facing the death penalty can obtain the testimony of experts who are trained on the manifestation and effects of mental and psychosocial illness and intellectual disability in women, including female-specific illnesses that can lead to women's offending, such as postpartum psychosis;

25 To be adapted according to the legislation of the country concerned by the advocacy activity.

26 To be kept or not according to the legislation of the country concerned by the advocacy activity.

- **Guarantee access to consular assistance for foreign women charged with death-eligible offenses, as required by the Vienna Convention on Consular Relations;**
- Ensure access to trained interpreters at all stages of a criminal case. Interpreters must be available to anyone who does not understand the official language or language of the court and prefers to work with an interpreter, and interpreters must be fluent in the defendant's native language.

Specific recommendations for countries with a high proportion of women sentenced to death for drug offense:

- **Eliminate the death penalty for offenses that do not meet the threshold of the « most serious crimes » under international law and standards, particularly for non-violent offenses. These include convictions for drug offenses;**
- Remove mandatory convictions for drug offense and ensure that the criminal justice system takes full account of any mitigating factors related to women's backgrounds, including economic pressures and domestic and gender-based violence;
- Promote mandatory training on gender-based violence including on domestic violence and its connection to women's offending in drug crimes **within the prison and judicial administrations;**
- Ensure that if sentence reductions are given to defendants who assist law enforcement, they are also available to those lower down in the drug trafficking pyramid such as drug couriers;
- **Guarantee access to consular assistance for foreign women charged with death-eligible offenses, as required by the Vienna Convention on Consular Relations;**
- **Ensure consular support for the treatment continuity of women sentenced to death (eg HIV, OST, diabetes, etc);**
- Ensure access to trained interpreters at all stages of a criminal case. Interpreters must be available to anyone who does not understand the official language or language of the court and prefers to work with an interpreter, and interpreters must be fluent in the defendant's native language;
- Provide defendants who cannot afford to hire their own attorney with state-appointed lawyers who have the training, experience, and resources necessary to provide effective, gender-sensitive legal representation. Ensure that defense counsel is available at all stages of the criminal process, including during interrogations, pretrial investigations, appeals, and other post-trial proceedings, including up to the day of executions. Require that court-appointed attorneys in capital cases have prior experience in capital cases;
- Ensure that defense lawyers have sufficient resources to prepare for trial, including to obtain information on the ongoing investigation, appoint experts and call witnesses.
- Collaborate with civil society to conduct and publish research on root causes and structural, systemic discrimination against women that may lead to women's increased likelihood of coming into conflict with the law, particularly in capital cases. For this collaboration, encourage the active participation of abolitionist and women's rights organizations in order to create synergies between these two movements.

Recommendations related to the custody of women accused of capital offenses and to the conditions of detention in death row:

- In accordance with the United Nations Bangkok Rules and the Mandela Rules, adopt gender-sensitive policies regarding the detention of women, ensuring their safety and fair and just treatment during their pre-trial detention, trial, sentencing and eventual imprisonment;
- Promote the training of staff to recognize symptoms of mental and psychosocial illness and depression in women on death row as well as on gender-based violence including on domestic violence;
- Ensure that women on death row have the possibility to participate in diverse training and social activities that do not reinforce gender stereotypes;
- Ensure that women's specific needs, including sexual and reproductive health care, medical and mental health care, harm reduction services for drug users, and protection from gender-based violence, among others, are addressed. Ensure that menstruating women have access to sanitary products, soap, and water;
- Provide appropriate accommodations for women with infants and young children so that they can stay together in a safe setting that minimizes trauma to the children;
- Ensure that, as required under Rule 45(1) of the Nelson Mandela Rules, no person is kept in solitary confinement by virtue of being sentenced to death;
- Design prison infrastructure that accommodates women's specific needs, including their privacy;
- House women in detention facilities that are as geographically close to their homes as possible and encourage family contact.

3. Standard recommendations retentionist or abolitionist in practice countries where there are no women on death row actually but there could be

General recommendations:

- Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards;
- Take steps to provide fair trial and due process safeguards in capital cases involving women defendants, including by providing them with access to effective legal representation and safeguards prohibiting admissibility of evidence obtained through torture or ill-treatment;
- **Codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence;**
- **Promote mandatory training on gender-based discrimination and violence, pathways to crime, and gender-sensitive mitigation to all those involved in the investigation, legal defense, prosecution, trial, adjudication, and conviction of crimes involving women;**
- Adopt provisions to ensure the independence and impartiality of the judiciary;

Recommendations related to prisons conditions:

- **Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's**

safety and security and fair and just treatment during their pre-trial detention, trial, sentencing and eventual incarceration;

- Design prison infrastructure that accommodates women's specific needs, including their privacy.

II. Key recommendation to insert the issue of LGBTQIA+ individuals and the death penalty

Reminder of the key pointers for making visible the specific discrimination LGBTQIA+ individuals are facing:

When including LGBTQIA+ issues into a death penalty report, it is important to determine:

- Can someone be sentenced to death for engaging in consensual same-sex sexual relationships or other expressions of LGBTQIA+ identity?
- Are consensual same-sex sexual relationships or other expressions of LGBTQIA+ identity criminalized (or are vague laws on morality or public decency or prohibitions against sex outside of marriage used to de facto criminalize LGBTQIA+ identity)?
- Are any LGBTQIA+ individuals currently under sentence of death or otherwise detained.
- Even if there is no criminalization of LGBTQIA+ identity and no LGBTQIA+ individuals on death row, it is still important to include information on how to protect the rights of LGBTQIA+ individuals who *could be* sentenced to death in the future.

It is recommended to add specific recommendations related to LGBTQIA+ individuals (can be found in this document).

- The recommendations in **bold** are the priority recommendations to be used in the shortest documents, like the 1 pager.

1. General information on LGBTQIA+ individuals and the death penalty

Definitions

- LGBTQIA+ stands for lesbian, gay, bisexual, transgender, queer, intersex, asexual and other identities not specified (+).
 - a. **Lesbian:** Designates a person who identifies as a woman and who is emotionally and/or sexually attracted to other women²⁷.
 - b. **Gay:** Depending on the region of the world, it designates a person who is emotionally and/or sexually attracted to other people of the same gender or multiple genders. However, in some contexts, this term has been used to refer to a person who identifies as a man and is emotionally and/or sexually attracted to other men²⁸.
 - c. **Bisexual:** A person who is emotionally and/or sexually attracted to more than one gender.
 - d. **Transgender:** A person whose gender identity does not align with their assigned sex at birth, regardless of hormonal, medical, surgical, or other intervention. For example, a transgender woman is a woman who was assigned male at birth. The term "transgender" or "trans" can also be understood as an umbrella term that

27 ILGA Europe, Glossary, available at: <https://www.ilga-europe.org/about-us/who-we-are/glossary/>

28 Ibid.

encompasses a range of trans identities (see definition of “non-binary” below). There is very little information about transgender people on death row, but we know that they are at particular risk of physical, verbal, and sexual violence, torture, and inhuman and degrading treatment in prison and other detention settings. Among the common practices we can cite the non-respect of their gender identity for the choice of prison, the use of solitary confinement, difficult access to care, etc.

- e. **Queer:** Originally a pejorative term used in the English language against homosexuals, people from the LGBTQ+ communities have reclaimed it as a symbol of protest and self-determination in the face of traditional gender categories. The term is often used as an umbrella term including “people who do not identify as exclusively straight and/or folks who have non-binary or gender-expansive identities”²⁹. It’s encompassing the LGBTQIA+ community, as well as people who do not wish to describe their sexual orientation or gender identity using the more restrictive LGBTQIA+ labels. Depending on the context, some people may still find the term offensive.
- f. **Intersex people:** An umbrella term for people born with reproductive or sexual anatomy that does not fit the typical binary definitions of male and female bodies, including a diversity of hormonal, chromosomal and/or physical sex characteristics. These characteristics can be visible at birth or later in life, often around puberty. Some of these people describe themselves as intersex, while others do not. Because their bodies are seen as different, intersex children and adults are often stigmatized and subjected to multiple human rights violations, including violations of their rights to health and physical integrity, to be free from torture and ill-treatment, and to equality and non-discrimination³⁰. For example, they can be subjected to strip and search practices in prison and detention settings that put them at risk of humiliation, degrading behavior, violence and torture.³¹ Until now, there is little to no information about intersex people on death row and the potential discrimination they may face.
- g. **Asexual:** A person who experiences little or no sexual attraction to any other person, oftentimes referred to as *ace*.

The plus (+) is important because it is intended to include the range of genders and sexual identities that exist. It represents other unspecified identities, including **graysexual** (little or infrequent sexual attraction), **demisexual** (sexual attraction correlated with emotional connection), **pansexual** (attraction to other people regardless of gender), **aromantic** (no romantic desire), and **agender** (people who do not identify with any particular gender), among others.

Overall, LGBTQIA+ individuals all share the commonality of being seen as challenging the established gender order by not conforming to societal gender norms and expectations. These individuals are often marginalized because of their gender identity or expression, sexual orientation, sex characteristics, and/or romantic desires. It is important to note that all of the above definitions related to LGBTQIA+ people are **not universal**. The definitions of these terms can vary by location and culture and are constantly evolving. This acronym is the most widely used in international law, but it is important to recognize that it is based on the “Global North” definitions, which refer to categories that are not universal. Some people may define these terms differently and define themselves with different terms. It is important to respect how each person defines themselves.

29 Human Rights Campaign, Glossary of Terms, available at: <https://www.hrc.org/resources/glossary-of-terms>

30 *Ibid*.

31 Milton, J, Intersex woman suffers ‘cruel and degrading treatment’ in men’s prison despite court pleas (July 2022), available at: <https://www.thepinknews.com/2022/07/05/intersex-australia-yatala-labor-prison/>

General information

- Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) restricts the use of the death penalty to only the « most serious crimes», which has been interpreted as those including « intentional killing ». ³² The Human Rights Committee has further clarified that “under no circumstances can the death penalty ever be applied as a sanction against conduct the very criminalization of which violates the Covenant, including ... homosexuality.” ³³
- In 2021, there are 69 states that criminalize consensual same-sex sexual acts between adults and, in 11 of the 84 countries that retain the death penalty, consensual same-sex sexual activity between adults could trigger a death sentence. ³⁴ In six of these countries, the death penalty is the prescribed punishment for consensual same-sex sexual activity, and in five it is a possible punishment. The Yogyakarta Principles Plus 10, which provide an authoritative interpretation of international human rights law’s applicability to issues of sexual orientation, gender identity and expression, and sex characteristics, specifically prohibits the criminalization of consensual same-sex sexual relations between adults. ³⁵
- In Afghanistan, Pakistan, Qatar, Somalia, and the United Arab Emirates, the codified legal system does not prescribe the death penalty for consensual same-sex sexual acts, but courts operating under Sharia law – which often work alongside criminal courts – may impose death sentences for consensual same-sex activity between adults. ³⁶
- The UN Special Rapporteur on the right to health noted that sentencing sexual minorities to death for consensual same-sex sexual activity is an arbitrary deprivation of life, which violates Article 6(2) of the ICCPR. ³⁷
- Most countries in which a death sentence is possible for consensual same-sex sexual acts between adults is restricted to men. In two countries, women may face the death penalty for engaging in consensual same-sex sexual activity. ³⁸
- It is common for individuals sentenced to death or executed for same-sex sexual acts to also face unrelated charges. Given the lack of reliable information in these cases, it is unknown whether these unrelated charges are factual. ³⁹ It is possible that the inclusion of unrelated charges is meant to associate LGBTQIA+ individuals with other forms of criminality; to send a message that same-sex sexual activity is on par with crimes such as murder, rape, or terrorism; and/or to « avoid or minimize international condemnation.» ⁴⁰
- There are also concerns that the reported number of executions for same-sex sexual activity may not reflect the actual number of individuals executed. It is possible that governments are executing sexual minorities in secret. ⁴¹

32 UN General Assembly, International Covenant on Civil and Political Rights, 1966, Art. 6(2); United Nations Human Rights Committee, *General Comment No. 36*, (Sept. 3, 2019), U.N. Doc. CCPR/C/GC/36, ¶

33 *Ibid.*

34 Monash University, Eleos Justice, and Capital Punishment Justice Project, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (hereinafter “*State-Sanctioned Killing*”), by Mai Sato and Christopher Alexander (Melbourne: Monash University, Feb. 2021)17, 24.

35 International Commission of Jurists (ICJ), *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, 10 November 2017, available at: <https://www.refworld.org/docid/5c5d4e2e4.html> [accessed 29 November 2022]

36 *Id.*, 26.

37 Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, (Apr. 27, 2010), A/HRC/14/20, ¶ 20.

38 *State-Sanctioned Killing*, 27.

39 *Id.*, 32

40 *Id.*, 32-33.

41 *Id.*, 33.

- There are reports that the State is more likely to target migrant workers and the poor than others.⁴²
- States do not solely criminalize, arrest, prosecute, and sentence to death individuals for consensual same-sex sexual activities. In many countries « alternative morality-based offenses, such as ‘cross dressing’ and ‘attacks against public morals » also serve as the basis for criminal prosecutions and, in some cases, death sentences.⁴³ These laws are often ambiguous, which grant the government discretion to police and prosecute LGBTQIA+ individuals.
- In some countries, there is widespread lack of acceptance of LGBTQIA+ individuals or practices and the public expresses the need to punish sexual and gender minorities. In these situations, LGBTQIA+ individuals may find it difficult to secure legal representation, may lose the support of their families, may experience torture and mistreatment in detention facilities, and/or may be « isolated to prevent other prisoners being ‘corrupted.’ »⁴⁴
- Even in countries in which the death penalty remains only one of several possible punishments for consensual same-sex sexual activity between adults, the government can threaten sexual minorities with the possibility of a death sentence.⁴⁵ The Special Rapporteur on extrajudicial, summary or arbitrary executions noted that « even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment ».⁴⁶
- In countries in which same-sex sexual activity is criminalized, individuals who experience homophobia, same-sex rape, or are blackmailed because of their sexual orientation are often unable to report these crimes to police for fear of being prosecuted for being a sexual minority. Many individuals also report experiencing beatings, torture, rape and other sexual violence, blackmail, and prolonged detention without charge by police and paramilitary groups. In some cases, police have forced LGBTQIA+ individuals to provide the names of other LGBTQIA+ individuals in exchange for their freedom.⁴⁷
- Within detention facilities, some LGBTQIA+ individuals reported not being willing to openly identify as LGBTQIA+, even in countries which have not criminalized these identities, for fear of sexual abuse and violence within the facility.⁴⁸
- The criminal justice system often places transgender individuals in detention facilities on the basis of their sex assigned at birth, and/or the gender listed on their identification documents. Often, this means that transgender women are placed in men’s detention facilities and transgender men are placed in women’s detention facilities, despite Rule 7.A of the Nelson Mandela Rules, which states that detention file management systems must record the individual’s « self-perceived gender [identity]. »⁴⁹
- Detention facility staff also frequently separate transgender women in men’s detention centers for their protection, but this may mean that the individual is, in effect, in solitary confinement. Separating transgender individuals from the general population, however, does

42 *Id.*, 33, 43.

43 *Id.*, 33.

44 *Id.*, 34.

45 *Id.*, 35.

46 Commission on Human Rights, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur*, (Jan. 7, 2006), E/CN.4/2006/53/Add.4, ¶ 35.

47 *State-Sanctioned Killing*, 39.

48 Centre Suisse de compétences en matière d’exécution des sanctions pénales, *La prise en charge des personnes LGBTIQ+ en détention* (hereinafter “*Des personnes LGBTIQ+ en détention*”), Jean-Sébastien Blanc, Didier Burgi, Philippe Haussauer, Simone Keller, Nicolas Peigné, Erika Volkmar, Beatrice Willen, Barbara Rohner, and Croline Saner (Fribourg, Suisse: Centre Suisse de compétences en matière d’exécution des sanctions pénales, 2021), 11.

49 *Id.*, 13-14; UN General Assembly Resolution 70/175 para. 7.A, U.N. Doc A/RES70/175 (Jan. 8, 2016). Also available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>.

not address the underlying transphobia within detention facilities, but rather reinforces stigmatization.⁵⁰

- Many detention facilities will also separate gay men from the general prison population under the guise of their protection. There are similar concerns stemming from solitary confinement as in paragraph above.⁵¹
- Due to a lack of international standards on how to care for LGBTQIA+ people in detention, many detention facility staff lack the training on how to appropriately protect LGBTQIA+ individuals from violence « without placing them in *de facto* isolation or restricting their participation in activities and access to services. »⁵²
- Because many transgender individuals in detention are in facilities that correspond with their assigned sex at birth, detention facilities often use staff members to perform bodily searches that do not correspond with the individuals' gender identity, which may cause humiliation to the individual being searched.⁵³
- Transgender individuals in detention also face particular difficulties in accessing healthcare, including gender-affirming healthcare. When detention facility staff blocks, denies, or interrupts transgender individuals access to gender-affirming care, it can cause serious physical and psychological health risks. Intersex people in detention may also require access to health care that, if restricted, could cause detrimental effects on health.⁵⁴
- LGBTQIA+ people are disproportionately represented in the criminal justice system, even in countries in which their sexual activities, identities, and sexual and gender expressions are not criminalized. This is due, in part, to « the prevalence of social norms reflecting rigidly ascribed gender and heteronormative ideals, which in turn result in family rejection, social stigma, homelessness, hostility in foster care, reliance on non-traditional means of earning income, and discriminatory profiling and targeting by law enforcement. »⁵⁵
- The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity noted in his 2018 report that laws that criminalize LGBTQIA+ identities and practices or allow for discrimination against people perceived to be sexual or gender minorities «fuel stigma, legitimize prejudice and expose people to ... institutional violence and further human rights abuses ... Such legislation and regulations reinforce gender stereotypes and foster a climate where hate speech, violence and discrimination are condoned and perpetuated with impunity by both State and non-State actors. They contribute to a social environment that explicitly permits and tolerates violence and discrimination based on sexual orientation or gender identity, creating a breeding ground for such acts.»⁵⁶
- Further, those laws that do not criminalize consensual same-sex sexual activity between adults *per se*, but rather criminalize statements, actions, or publications on sexual orientation, gender identity, gender expression, or sex characteristics – often referred to as «gay propaganda» – or otherwise regulate public morality, health, and security, «tend to exacerbate police abuse and harassment, extortion and acts of violence against people based on their perceived or real sexual orientation or gender identity, drawing them into the criminal justice system, sometimes leading to further incidents of discrimination and violence.»⁵⁷

50 *Des personnes LGBTIQ+ en détention*, 13-14.

51 *Ibid.*

52 Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide* (hereinafter "*Towards Effective Protection*"), (Geneva: Association for the Prevention of Torture, 2018), 13.

53 *Des personnes LGBTIQ+ en détention*, 14.

54 *Id.*, 18-19.

55 *Toward Effective Protection*, 21.

56 Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (hereinafter "*Report of the Independent Expert*"), (May 11, 2018), U.N. Doc. A/HRC/38/43, ¶ 52.

57 *Id.*, ¶ 56.

2. Standard recommendations on LGBTQIA+ individuals and the death penalty⁵⁸

Recommendations for countries where same-sex sexual activity may result in a sentence of death

- Immediately institute a de jure moratorium on executions with a view to abolishing the death penalty and, in the meantime, commute the death sentences of any persons currently under sentence of death and replace them with penalties that are fair, proportionate, and consistent with international human rights standards ;
- **Amend the criminal code to eliminate any provisions authorizing the death penalty for consensual same-sex sexual activity between adults. Commute the sentence of any individuals currently under sentence of death for same-sex sexual activity to a penalty that is fair, proportionate, and consistent with international human rights standards ;**
- **Remove all prohibitions against consensual same-sex sexual activity between adults from the jurisdiction of traditional, Sharia, or other parallel criminal systems and prosecute such charges only under codified criminal law ;**
- **Repeal all laws that criminalize consensual same-sex sexual activity between adults. Commute the sentences of all individuals convicted of these crimes; release any individual detained under these laws; instruct prosecutors and police to cease prosecutions and arrests on these charges ;**
- Prevent the introduction of any new laws that further criminalize homosexuality, increase punishment for homosexual acts between consenting adults, or lead to discrimination against LGBTQIA+ individuals.

Recommendations for countries where LGBTQIA+ individuals could be on death row

- **Provide access to detention facilities to independent NGOs, civil society organizations, and outside observers to document detention conditions and the treatment of LGBTQIA+ individuals. Permit collected data to be published ;**
- Provide transparent, accurate, and complete data on detention conditions for people on death row, the number of individuals executed, and the crimes for which they are executed. Disaggregate data by sex, gender, age, familial status, nationality, race, ethnic group, religion and handicap.
- Collect and regularly publish data about all complaints received alleging torture or other ill-treatment during investigation of crimes, in police custody, and in detention facilities, including the nature of the complaint, the authority receiving the complaint, investigative measures taken, results of the investigation, accountability measures pursued, and remedies, if any, provided to the victim. The data provided should include all complaints received alleging torture or other ill-treatment in the following circumstances: during investigation of an alleged crime; during the period in which a person is on trial for a criminal offense; while a person is held in pre-trial detention; while a person is detained after conviction while any appeals are pending; and while a person is detained after conviction after the exhaustion of any appeals ;
- Implement measures to ensure impartial, thorough, and transparent investigations into cases of torture perpetrated by state actors and regulate interrogation methods and their procedures, duration, and location ;
- Promote mandatory training on LGBTQIA+ rights and needs in detention for law enforcement ;
- Ensure presence of legal counsel for the defendant or accused during interrogations ;

⁵⁸ Bolded recommendations are recommendations that should be prioritized when there is limited space, such as on one-pagers.

- **Ensure adequate protection of human rights defenders and legal professionals who aid LGBTQIA+ persons ;**
- **Adopt policies that are sensitive to the detention and specific needs of LGBTQIA+ individuals, including sexual and reproductive health care, medical and mental health care, and gender-affirming care, among others ;**
- **Design prison infrastructure that accommodates LGBTQIA+ individuals' specific needs, including their privacy ;**
- **House transgender individuals in detention facilities that correspond with their gender identity ;**
- **Adopt appropriate measures to tackle social prejudices, stigmatization, harassment, discrimination, and violence against individuals on the basis of their real or perceived sexual orientation, gender identity, gender expression, or sex characteristics ;**
- **Investigate all allegations and reports of attacks on LGBTQIA+ individuals and their community and prosecute perpetrators of such attacks ;**
- **Enact laws prohibiting discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics, including in education, housing, employment, and access to services.**

III. Key Resources on women and LGBTQIA+ individuals and the death penalty

1. General resources on women and the death penalty

- Cornell Center on the Death Penalty Worldwide, *Judged for more than her crime: A Global Overview of Women Facing the Death Penalty*, (September 2018), available at: <https://deathpenaltyworldwide.org/publication/judged-more-than-her-crime/>
- Cornell Center on the Death Penalty Worldwide, *No One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (September 2021), available at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>
- Human Rights Council, *Report of the Secretary-General, (8 August 2022), UN. Doc. A/77/274*, para VIII. Discriminatory application of the death penalty against women.
- *World Coalition Against the Death Penalty*, Detailed factsheet : Women and the Death Penalty, (July 2021), available at <https://worldcoalition.org/document/detailed-factsheet-women-and-the-death-penalty/>
- United Nations Office on Drugs and Crime, *The Bangkok rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary*, (December 2010), available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
- United Nations Office on Drugs and Crime, *The Nelson Mandela Rules: The United Nations Standard Minimum Rules for the Treatment of Prisoners*, (2011), available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
- Cornell Center on the Death Penalty Worldwide, *Defending Women and Transgender Persons Facing Extreme Sentences: A Practical Guide*, (October 2021), available at : <https://deathpenaltyworldwide.org/publication/defending-women-and-transgender-persons-facing-extreme-sentences-a-practical-guide/>

2. General resources on LGBTQIA+ individuals and the death penalty

- Monash University, Eleos Justice, and Capital Punishment Justice Project, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty*, by Mai Sato and Christopher Alexander (Melbourne: Monash University, Feb. 2021). Also available at https://bridges.monash.edu/articles/report/State-Sanctioned_Killing_of_Sexual_Minorities_Looking_Beyond_the_Death_Penalty/14069318.
- Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, (May 11, 2018), U.N. Doc. A/HRC/38/43.
- ILGA World, *State-Sponsored Homophobia 2020: Global Legislation Overview Update*, by Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Leis, Enrique López de la Peña, Ilia Savelev, and Daron Tan (Geneva: ILGA, Dec. 2020). Also available at

[https://ilga.org/downloads/ILGA World State Sponsored Homophobia report global legislation overview update December 2020.pdf](https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf).

- Centre Suisse de compétences en matière d'exécution des sanctions pénales, *La prise en charge des personnes LGBTQ+ en détention*, Jean-Sébastien Blanc, Didier Burgi, Philippe Haussauer, Simone Keller, Nicolas Peigné, Erika Volkmar, Beatrice Willen, Barbara Rohner, and Croline Saner (Fribourg, Suisse: Centre Suisse de compétences en matière d'exécution des sanctions pénales, 2021).
- Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, (Geneva: Association for the Prevention of Torture, 2018).
- ECPM, "Love Is Not a Crime," <https://www.ecpm.org/en/campaigns/love-is-not-a-crime-3/>.
- ECPM, "A report on the application of the death penalty for consensual same-sex conducts: 10 questions on the death penalty for LGBTQIA+", (November 2022)
- Cornell Center on the Death Penalty Worldwide, *Defending Women and Transgender Persons Facing Extreme Sentences: A Practical Guide*, (October 2021), available at : <https://deathpenaltyworldwide.org/publication/defending-women-and-transgender-persons-facing-extreme-sentences-a-practical-guide/>