



Cornell Law School

Cornell Center on the
Death Penalty Worldwide



Prison conditions for women facing the death penalty

A factsheet

Introduction

There are at least 500 women currently on death row around the world. While exact figures are impossible to obtain, it is estimated that over 100 women have been executed in the last 10 years—and potentially hundreds more. With at least 21,919 people known to have been on death row at the end of 2017,¹ women constitute less than 5 per cent of the world's death row population and similarly less than 5 per cent of executions.

The number of women facing execution is not dramatically different from the number of juveniles (under 18 years of age at the time of the offense) currently on death row, but the latter have received a great deal more attention from human rights bodies, national courts, scholars and advocates.

“Women’s needs in prison are frequently ignored. This is attributable to gender discrimination and stereotypes of women embraced by the criminal justice system: ‘popular as a victim, forgotten as a defendant’.² This ignorance is even more pernicious in the case of women on death row.”

Little empirical data exists 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 Factsheet focuses on the latter topic, with some introductory remarks on the profiles of

AN ESTIMATE OF WOMEN ON DEATH ROW AND EXECUTED IN THE LAST 10 YEARS



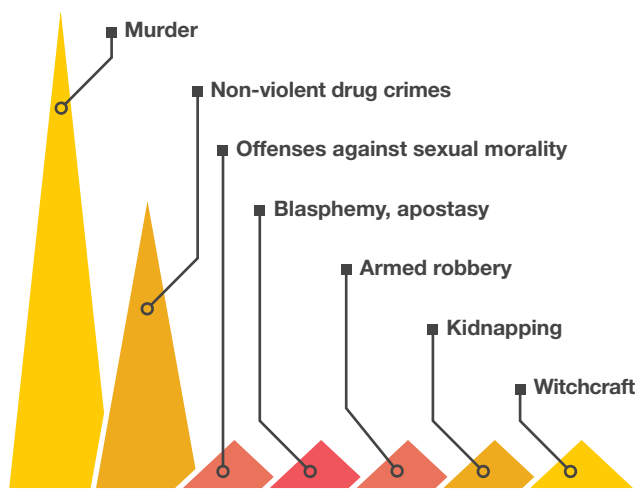
women under sentence of death. It draws on research published by the Cornell Center on the Death Penalty Worldwide in 2018,³ which has shed light on this much-neglected population.

Profiles of women who have been sentenced to death

The crimes for which women are condemned to death reveal patterns connected to gender inequality. The link between violence against women and imprisonment is striking, and this is particularly true for women on death row.

The research that underpins this publication was conducted by the Cornell Center on the Death Penalty Worldwide. The full study is published in *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (A Report of the Alice Project), Cornell Center on the Death Penalty Worldwide, September 2018, available at: bit.ly/MoreThanHerCrime. All references are to this publication except where otherwise indicated.

COMMON OFFENSES FOR WHICH WOMEN ARE SENTENCED TO DEATH



Estimated proportion of death sentences by type of offense

Most women on death row have been sentenced to death for the crime of murder, with many of these crimes involving murders of close family members in a context of gender-based violence.

Drug-related offenses form the next largest category of crimes leading to death sentences for women—particularly in the Middle East and Asia. Again, gender dynamics and female disempowerment are salient factors associated with women's involvement in drug crimes. Other offenses for which women have received death sentences include: offenses against sexual morality, which are applied discriminatorily against women; terrorism-related offenses; witchcraft; blasphemy; kidnapping; and armed robbery.

Like the vast majority of male death row prisoners, women in vulnerable situations are overrepresented on death row; many are indigent and suffer from mental disorders or intellectual disabilities. Members of racial, ethnic or religious minorities are especially vulnerable to prosecution for capital crimes. In addition, women face intersecting forms of discrimination based on 'gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence'.⁴

The majority of women sentenced to death have experienced trauma and gender-based violence. Women facing capital prosecution arising out of domestic abuse in particular suffer from gender discrimination on multiple levels. With few exceptions, criminal justice systems fail women in such cases by ignoring their trauma and the dynamics of domestic violence, as evidenced in a 2016 study by Penal Reform International (PRI) and Linklaters LLP on cases where women fatally attack their abusers, *Women who kill in response to domestic violence: how do criminal justice systems respond?*⁵ In many countries, there is no separate basis in law or mechanisms allowing courts to consider evidence of gender-based violence.

Furthermore, courts are not equipped with the right guidance or show a reluctance to take victimization into account.

While only three countries that retain the death penalty in their legislation prohibit its application to all women (Belarus, Tajikistan and Zimbabwe), pregnant women are universally excluded from the use of the death penalty—although in some countries they may be executed after giving birth. While such limitations embody important human rights norms, including the principle of the best interests of the child, it is worth reflecting that they also signal that the quality for which women deserve clemency is their connection to motherhood. No international protections prohibiting the application of the death penalty are available for women who do not conform to this role.

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)⁶ require courts to consider mitigating factors when sentencing women, 'such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds'.

Prison conditions for women under sentence of death

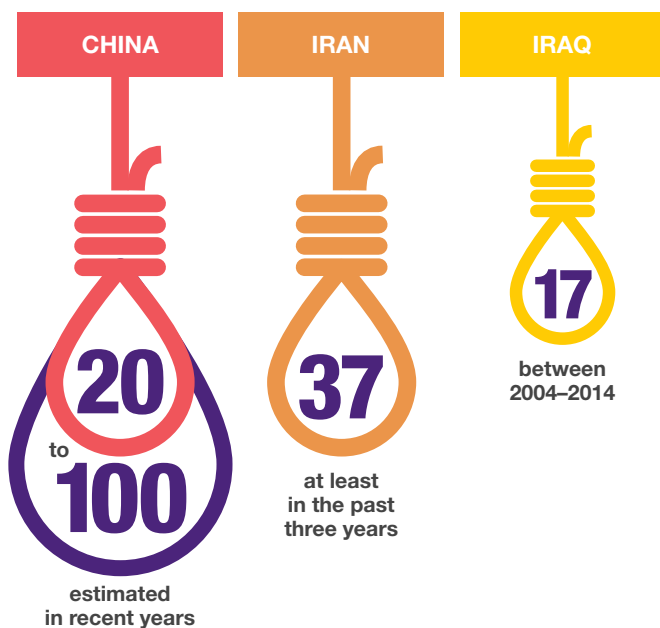
Detention conditions in most states that retain the death penalty fall far short of minimum standards. The unique situation of women on death row merits attention, particularly because we know little about their living conditions. Addressing women's specific needs is particularly important during an era of de facto moratoria. Women tend to remain on death row for increasingly longer periods in prisons that are not designed for women generally or for long-term women prisoners specifically.

International standards

The key international conventions protecting the human rights of capital defendants and death-sentenced prisoners are the International Covenant on Civil and Political Rights and the Convention against Torture. While providing important protections, these international conventions and relevant regional instruments mostly focus on women's roles as mothers and caregivers.

The Bangkok Rules are the primary instrument guiding the treatment of women in prison. The Bangkok Rules complement the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), which outline specific provisions concerning women, including rules on their separation from male detainees and their supervision by female staff.

COUNTRIES THAT EXECUTE THE GREATEST NUMBER OF WOMEN



Inhumane conditions

Living conditions on death row remain poor for both men and women; however, given that most facilities are designed with the majority male population in mind, the unique needs and vulnerabilities of women are overlooked. In countries that do not execute women, the prolonged length of their death sentences means that poor conditions have a disproportionate impact on their physical and mental well-being.

Women serving death sentences are vulnerable to violence, particularly in prisons where male staff supervise them, or where prison authorities fail to protect them from violence at the hands of other prisoners. For example, 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.⁷ Women’s vulnerability, due to gender and social norms, means that they often seek protection from staff or other female prisoners. In some cases, for instance in **Tanzania**, predatory and arguably coercive ‘relationships’ ensue, and women on death row may even be required to perform sexual acts to receive basic necessities, such as food.⁸ In **Sierra Leone**, there are reports that prison guards and other prisoners abuse female prisoners with mental health disorders.⁹

Shackling death row prisoners is common in some countries, for instance in **China** where shackles are used at all times (on hands and feet). There have been reports that children are required to help shackled women eat, illustrating the impacts of this humiliating and unnecessary practice.¹⁰ Despite the Bangkok Rules prohibiting the use of restraints on women who are pregnant, during labor or after birth, in **Sudan** a death row woman

prisoner was shackled to heavy chains in prison while eight months pregnant and caring for a young child, and during childbirth.¹¹

Similarly, death row prisoners are frequently held in solitary confinement, either by virtue of their sentence or as a disciplinary sanction. Despite limitations set down in the Mandela Rules, prolonged solitary confinement (which is prohibited) for women and men on death row has been reported in **China, Indonesia, Jordan, India** and the **United States**.¹² Evidence shows that solitary confinement brings unique harms and dangers to women prisoners. This is linked to the disproportionately high rates of mental illness and trauma from past abuse suffered by women in prison.¹³ Solitary confinement also restricts visits between a mother and her children, in effect punishing the children.¹⁴

Prison overcrowding affects detention facilities globally, including female death row, resulting in a range of human rights violations and dangerously unhygienic conditions. In **Thailand**, for example, where female death row prisoners are held with the general prison population, cells are so crowded that women must take turns sleeping on the bare floor.¹⁵ In **Malawi**, some women must urinate or defecate in a bucket at night because the toilets outside the cells are inaccessible at nighttime.¹⁶ While this is also the case for men, such a lack of privacy brings disproportionate stigma on women and illustrates how the design of prison infrastructure can impact negatively on meeting women’s specific needs.

Prisons generally fail to provide women with female-specific healthcare and deprive them of necessary hygienic products. For those serving long terms in prison, healthcare needs become greater and more complex – including mental ill-health and complications from lack of hygiene – and particularly in overcrowded facilities or where health provision is lacking.

Many prisons do not proactively provide healthcare and hygiene adequate for women’s menstruation. In **Zambia**, prisoners must wash menstrual cloths with inadequate or no detergent, since the prison does not supply soap.¹⁷ The lack of menstruation care is compounded by the lack of privacy and washing and bathing facilities in most prisons. Moreover, sanitary napkins, when provided, are sometimes withheld as punishment.¹⁸

Women prisoners sometimes face greater challenges in accessing adequate healthcare than their male counterparts. In **Indonesia**, health clinics in women’s prisons are basic and not always staffed with doctors, unlike infirmaries in men’s larger prisons. Women must endure shackled transport to hospitals for even minor treatment.¹⁹ Mental healthcare is rarely available even though a high percentage of women in prison have histories of sexual and physical trauma and are susceptible to depression.²⁰

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 inadequate in calories. The total budget for food in **Indonesia** is equal to US\$1.20

per prisoner per day.²¹ In practice, this means that no accommodations can be made for prisoners with dietary restrictions, such as for diabetic prisoners.²² 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.²³ Prisoners generally rely on their families to provide or supplement meager rations provided by prisons, but women under sentence of death, who are often abandoned by their families, cannot rely on food support from the outside.²⁴

Isolation from family and community

Recognizing the detrimental impact of isolation on women, the Bangkok Rules stress the importance of women's communication with family and friends, and especially contact with their children.²⁵ Nevertheless, the social stigma associated with women who are convicted and imprisoned, paired in some cases with restrictive family and child visitation rules and allocation far from their communities,²⁶ means that many female death row prisoners around the world suffer an enduring lack of family contact. This is especially true for women convicted of violence against a family member, which often leads to family abandonment.²⁷ In **Malawi**, women on death row rarely receive visits.²⁸ Prisons in **Nigeria** or in the **United States** maintain time-limited visitation policies, increasing the difficulty of planning visits.²⁹ In some countries, restricting or withholding visitation is sometimes used by prison staff to punish death row prisoners, which contravenes the Bangkok Rules.³⁰

Children on death row with their mothers

The Bangkok Rules require prisons to ensure that children detained with their mothers are raised in an environment as close as possible to the world outside prison, with appropriate medical and educational support.³¹



“ I don't do anything.
I sweep and I wait... ”

Woman in Ghana on death row, after being denied educational opportunities while on death row.³⁷

While it is unusual, there have been cases where children are born in prison to women under sentence of death and stay for several years on death row. In **India**, one female death row prisoner was pregnant at arrest and gave birth in prison. Her son stayed with her until he was six, at which point prison regulations mandated that he leave the prison.³² As the prisoner had no family willing to raise him, he was placed with a foster family and has had severe problems integrating into life outside prison.³³ There have been other cases in **Pakistan** and **Uganda** of children living with their mothers on death row.

Lack of work and education opportunities

The Mandela Rules and the Bangkok Rules oblige prison authorities to implement work and education programs that offer prisoners stability, routine and a sense of accomplishment.³⁴ In practice, these programs are rare and when offered often involve gender-stereotyped activities. In **Indonesia**, women under sentence of death may take part in cooking and cleaning courses,³⁵ and in **Malawi** they may participate in weaving, gardening and chores. 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 prisoners do not. Death row prisoners who cannot work are more susceptible to depression as they have fewer opportunities for participation and form fewer meaningful relationships with other female prisoners.³⁶ 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.'³⁷

Conclusion

There is scarce data and information about women on death row: researchers, activists and policymakers have, to date, largely ignored how and why women are sentenced to death, let alone the conditions they face on death row. This was also true of women prisoners generally until the adoption of the Bangkok Rules on women prisoners in 2010, and is attributable to gender discrimination. Women on death row have thus remained largely invisible as a specific category of rights bearers under international law.

Despite the Bangkok Rules and the Mandela Rules, detention conditions in most death penalty states remain woefully inadequate and, in some cases, life-threatening.

10 key recommendations

The following recommendations are not exhaustive, but rather indicate priority areas for stakeholders to address urgent issues affecting women in prison generally, and particularly women on death row.

- 01** Work towards abolition of the death penalty, in accordance with the requirement of international laws to progressively realize abolition, by eliminating it for offenses that do not meet the ‘most serious crimes’ standard, particularly crimes that do not involve the intentional taking of human life, including non-violent drug offenses; crimes of morality such as blasphemy, adultery and lesbianism; and felony murder cases where the defendant did not kill or intend to kill. Commute the sentences of women currently on death row for such offenses, ensuring the alternative sentence is proportionate (at a minimum, not life imprisonment without parole).
- 02** Implement policies and legislative reforms that prevent the application of the death penalty when women act against their abusers and commute the sentences of women currently on death row in such cases.
- 03** Reform legislation and train judicial actors to ensure histories of abuse are considered as a mitigating factor in relevant cases, including by codifying gender-specific defenses and/or mitigating factors.
- 04** In accordance with the Mandela Rules and the Bangkok Rules, ensure women’s safety and security while in detention, including by hiring and training female prison staff to supervise women, and prohibiting the prolonged use of solitary confinement and the punitive denial of visits.
- 05** Limit the use of shackles or any restraint on women on death row, in line with the Mandela Rules, and absolutely prohibit their use during pregnancy, childbirth and nursing, as required by the Bangkok Rules.
- 06** Provide gender-specific health services to women on death row, including through training staff to recognize and address symptoms of mental illness and ensuring women have access to free sanitary products.
- 07** Make efforts to house women geographically close to their homes and communities to facilitate contact with the outside world.
- 08** Adequately provide for the medical, educational and social needs of children living with their mothers on death row, in accordance with international standards.
- 09** Permit and encourage the participation of women on death row in education and other rehabilitation programs in prison.
- 10** Increase transparency by making data and information publicly available on the number of women on death row, demarcated by age and the offenses for which they are convicted, to further support research and evidence-based policy and practice.

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A factsheet on Prison Conditions for Women Facing the Death Penalty

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The Cornell Center on the Death Penalty Worldwide

specializes in research, advocacy, and training on the death penalty. The Center publishes evidence-based research and manuals on issues of practical relevance to defense lawyers, governments, and organizations grappling with the application of the death penalty, aiming to address issues that have received scant attention from other organizations and scholars. It also engages in targeted advocacy, focusing on the implementation of international fair trial standards and the rights of those who come into conflict with the law.

The Center's website hosts a comprehensive database of the laws and practices of all countries and territories that retain the death penalty. The Center also provides support and training to capital defense lawyers around the world, particularly those from resource-scarce jurisdictions.

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