

Report to OHCHR on “human rights in the administration of justice, in particular on violence, death and serious injury in situations of deprivation of liberty”, pursuant to Resolution 36/16

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Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

HRI's efforts are focused on the abolition of death penalty for drug offences. The organisation opposes the death penalty in all cases without exceptions, regardless of the person accused and their conviction, the nature of the crime, and the method of execution.

Introduction

Individuals on death row retain their fundamental rights, and must be granted the same protection and conditions as the general prison population. These standards are enshrined in international and regional human rights treaties, and in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

Notwithstanding, unique circumstances characterising death rows – the length of the detention, the stress that accompanies a death sentence, the secrecy surrounding the use of capital punishment – make death row an environment where individuals are at a heightened risk of physical and psychological violence. This includes: torture and cruel, inhuman, and degrading treatment; sexual violence; severe isolation and abuse of solitary confinement; denial of adequate food, water, and sanitation; denial of contact with family members; and, lack of appropriate healthcare.¹

This report will focus on **forms of violence on death row**, also emphasising the heightened vulnerability of women sentenced to death.

Death row: an environment at a heightened risk of violence

According to Amnesty International, at least 19,336 people were under sentence of death at the end of 2018.² Of these, at least 7,000 are held for drug-related offences, which do not meet the definition of ‘most serious crimes’ to which the death penalty must be restricted in retentionist countries.³

Conditions of detention on death row vary considerably between states, regions, and prisons. However, individuals awaiting execution systematically endure abusive and dehumanising conditions. The severe conditions of detention, and the physical and psychological violence death row prisoners are subjected to, often result in permanent physical and/or psychological trauma; in extreme cases, they lead to death or suicide. The uncertainty and isolation that characterise death row, mixed with the inhumane conditions of detention described in the following paragraphs, give rise to the so-called ‘death row phenomenon.’ Several UN mechanisms as well as regional bodies have denounced this phenomenon as a form of ill-treatment in itself. Among others, the Special Rapporteur on Torture denounced the “destructive nature”⁴ of the phenomenon, and found it to violate the prohibition of torture and inhumane and degrading treatment.⁵

Worryingly, a recurring feature of the administration of the death penalty is the systemic lack of transparency, and specifically a lack of information on (1) the conditions of detention of individuals sentenced to death; and (2) deaths on death row and their causes.

Secrecy tends to create an environment more conducive to violence, abuse, and impunity, and it prevents from gathering information on the conditions of individuals who are in a situation of heightened vulnerability.

In 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions reflected upon the role of transparency in the imposition of the death penalty, and identified situations in which the impact of secrecy (both on the prisoner and on the family) is so dire to amount to cruel and inhuman treatment in itself.

The Rapporteur concluded that “although the death penalty is not prohibited by international law, its use is potentially inconsistent with respect for the right to life when its administration is cloaked in secrecy.”⁶

Regrettably, evidence from many countries – some of which is detailed below – reveals that little progress was made in the past twelve years to increase transparency around the use of capital punishment, as well as to ensure that individuals on death row are held in humane and dignified conditions.

Violence on death row

Below are some forms of violence and abuse that individuals on death row endure, and case studies of countries where those issues have been reported.

a) Physical and psychological violence

Physical abuse is reportedly common on death row, in the form of shackling, detention in cages or in uncomfortable and unnatural positions for hours, violence, abuse, and humiliation.

In countries, such as Barbados, Belarus, Japan, Nigeria, and Zimbabwe, death row prisoners are kept in cages and/or confined to dark rooms, sometimes intentionally close to the gallows – so that they can hear executions.⁷ Death row prisoners live shackled to their hands and/or feet in China,⁸ Saint Lucia, South Sudan, Taiwan, Thailand,⁹ and Vietnam.⁹

Prisoners on death row in India have denounced episodes of physical and psychological violence committed by fellow prisoners or by prison authorities, including: physical assault, stripping, beatings, sometimes in front of other prisoners. When perpetrated by fellow prisoners, episodes of violence were denounced to the prison administration, which in several cases failed to take any meaningful action to prevent and redress the abuses.¹⁰

Physical violence in the form of beatings, harassment, physical and verbal humiliation on death row is commonplace in Egypt.¹¹

b) Isolation, prison overcrowding, and cruel and inhuman conditions of detention

In many countries, persons sentenced to death are either held in isolation and solitary confinement, or – on the contrary – in severely overcrowded cells, in unhygienic conditions.

The Special Rapporteur on Torture found that “individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate.”¹² Accordingly, the Rapporteur concluded that solitary confinement on death row as such constitutes cruel, inhuman or degrading treatment or punishment, if not torture.

Some of their most extreme forms of detention have been denounced in:

- Japan, where death row prisoners live squatted in their cells and are prohibited from exercising,¹³
- Pakistan, home to one of the largest death row populations in the world. Here, eight-by-ten foot cells are shared by up to ten prisoners for 22 hours a day, while the other two hours are spent walking, handcuffed, around the prison.¹⁴
- Iran. Here, death row prisoners reportedly live in solitary confinement for 23 hours a day, in unhygienic and inhabitable cells. Conditions of detention appear to become even more inhumane closer to execution. A former death row prisoner recounted:

“A prisoner who is taken to his final visit hasn't cleaned himself and eaten in days and has had to wash his hands in the toilet bowl of his solitary confinement cell. As the windows are sealed shut, the solitary confinement cell is steaming hot in the summer. I could virtually see the sweat coming out of the cells of my skin.”¹⁵

On his/her last night of solitary confinement before execution, “[the prisoner’s] hands and feet tied together, he lies on the floor of the cell with his eyes fixed on the ceiling”.¹⁶ Conditions are so appalling that, according to the same source, “suicide is rampant” on death row.¹⁷

- Egypt.¹⁸ The Egyptian Initiative on Personal Rights (EIPR) reported that “the typical Egypt death row inmates usually spend their time: isolated from the general prison population and held in solitary confinement size of 1.5mx2m, without a toilet or adequate lighting or ventilation. They are only allowed out of the cell for 15 minutes a day to ‘walk’ and to empty the bucket they use as a toilet, they spend as much as 23 hours and 45 minutes a day alone in their cell in a state of constant uncertainty over when they will be executed.”¹⁹ The use of lengthy solitary confinement against death row prisoners was also confirmed by a 2018 report by Amnesty International.²⁰ In several cases, the result of lengthy detention in unhygienic conditions (including lack of toilets), coupled with the denial of medical assistance, is the spreading of infectious diseases.²¹
- Many death row prisoners in Vietnam survive in total isolation.²² In some cases, they are chained for but fifteen minutes a day, when they are unshackled to wash.²³ In its 2018 Concluding Observations on Vietnam, the UN Committee against Torture expressed concerns “about reports of the physical and psychological suffering that persons sentenced to the death penalty have experienced as a result of their particularly harsh conditions of detention, which may amount to torture or ill-treatment, including solitary confinement in unventilated cells, inadequate food and drink, being shackled 24 hours a day and

being subjected to physical abuse, and that such prisoners often commit suicide and develop psychological disorders as a result.”²⁴

- Project 39A (National Law University) has reported in detail about the conditions of detention on Indian death rows, on the basis of interviews with detainees.²⁵ These were consistent in describing inhumane conditions of detention, characterised by violence and abuse, discrimination, poor hygiene, lack of essential health services and basic amenities, sleep deprivation.

Project 39A also found instances where death row prisoners are held in solitary confinement, in violation of the Indian Constitution and Penal Code.²⁶ One prisoner described his life of detention:

“He was kept in solitary confinement in a cell with no source of sunlight. He was provided food in his cell and was permitted to come out of his cell for only 20 minutes every day. His solitary confinement began in September 2013 and he had no human contact since then, except for an occasional conversation with the guard stationed outside his cell at all times.”²⁷

These conditions of detention are a source of permanent damage to the mental as well as physical health of the prisoners, and in some cases have led to suicide.²⁸

c) Uncertain waiting times for execution, and undue restrictions on contact with the outside world

The process leading to execution can cause considerable anxiety and suffering, for both prisoners and their families, and insomuch constitutes a form of psychological violence. Prisoners frequently wait on death row for years, if not decades;²⁹ they may be informed of their execution date at the last minute, allowing little or no time to say goodbye to their families. Some prisoners have their execution announced and then suspended multiple times.³⁰

In many countries executions are not regularly announced, in contrast with what required by international law, and this puts a strain on the already fragile mental health of death row prisoners. The Vietnam Committee on Human Rights revealed that “as prisoners are not informed in advance of their execution date, they stay awake all night in fear of being called, only sleeping at 6.00 am when they know their turn has not come.”³¹ This pushes prisoners to “beg[...] to be executed as soon as possible as soon as possible rather than live with the terror of waiting for an unknown execution day. Several death row inmates have committed suicide [...] and others have unsuccessfully attempted to end their lives.”³²

Women on death row

Resolution 36/16 stressed that “women in detention or imprisonment have certain different needs, including different health-care needs” and, accordingly, acknowledged the critical importance of gender-sensitive justice systems.

Notwithstanding, women on death row appear to often endure worse condition of detention than their male counterparts, and to be vulnerable to unique forms of violence.

A 2018 report by the Cornell Center on the Death Penalty Worldwide³³ highlighted the particularly harsh conditions that women endure on death row:

- In Indonesia, women awaiting executions share overcrowded cells with up to 30 other women, and are often denied adequate healthcare.
- Overcrowding is a serious concern in prisons in Thailand where, at the end of 2018, 76 out of 83 women on death row were convicted of drug offences. Women on death row share their cells with the general female prison population, in such small spaces that they must take turns to lie down to sleep on the floor.
- In Iran, where at least 89 women were hanged for drug offences in the past 18 years,³⁴ conditions of detention are described as “inhuman”, “catastrophic”, and “medieval”.³⁵ Local civil society reports a disturbing range of abuses, including: stripping and beatings, flogging, hanging, isolation in total darkness for weeks, forced removal of nails, and, denial of food.³⁶

Women on death row tend to endure worse conditions than men in the same position, especially concerning access to food, water, and sanitation. Death row prisoners in Indonesia often survive on a calorie deficit diet, while in India female prisoners receive less food of poorer quality than male prisoners. Women face additional obstacles in accessing healthcare, while gender-specific treatment is often simply non-existent. There are reports of women on death row being forced to give birth alone in both in Myanmar and Thailand.³⁷

Finally, due to unequal, gendered power dynamics between the prisoners and the prison personnel, women are vulnerable to mental, physical, and sexual violence.

Recommendations:

In light of the above, we call upon OHCHR to:

- 1) Identify the death penalty as a source of physical and psychological violence and acknowledge the death row phenomenon as a form of violence in itself, leading to lasting injury; accordingly, urge retentionist states to establish a moratorium on executions, as a first step towards abolition;
- 2) Acknowledge the systemic secrecy that characterises the administration of justice – and in particular the use of capital punishment - in many countries, and renew calls for increased transparency, including around the conditions of detention on death row, deaths on death row, and their causes;
- 3) Urge UN Treaty Bodies and Special Procedures of the Human Rights Council to pay particular attention to the plight of individuals on death row, and to States’ responsibilities to protect, respect and promote the fundamental rights of all individuals, including those on death row.

¹ Among others, see: World Coalition Against the Death Penalty [WCADP], “Living Conditions on Death Row: Detailed Fact Sheet - 16th World Day against the Death Penalty,” October 10, 2018, http://www.worldcoalition.org/media/resourcecenter/EN_FactSheet_WD2018.; Harm Reduction International, “The Death Penalty for Drug Offences: Conditions of Detention on Death Row” (Harm Reduction International [HRI], March 2019), <https://www.hri.global/files/2019/03/12/death-row-conditions-2018.pdf>.

² Amnesty International, “Death Sentences and Executions in 2018,” April 10, 2019, <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

³ Human Rights Committee, “General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life” (United Nations, 2018), https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf. GC 36

⁴ Human Rights Commission, “Extrajudicial, Summary or Arbitrary Executions. Report of the Special Rapporteur, Philip Alston: Transparency and the Imposition of the Death Penalty,” March 24, 2006, UN Doc. E/CN.4/2006/53/Add.3. Para. 42-51

⁵ Ibid.

⁶ Human Rights Commission, “Extrajudicial, Summary or Arbitrary Executions. Report of the Special Rapporteur, Philip Alston: Transparency and the Imposition of the Death Penalty.”

⁷ World Coalition Against the Death Penalty [WCADP], “Living Conditions on Death Row: Detailed Fact Sheet - 16th World Day against the Death Penalty.”

⁸ The Cornell Centre on the Death Penalty World Wide, “Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty,” A Report of the Alice Project, September 2018, <https://www.deathpenaltyworldwide.org/pdf/judged-for-more-than-her-crime.pdf>. Pag. 21

⁹ World Coalition Against the Death Penalty [WCADP], “Living Conditions on Death Row: Detailed Fact Sheet - 16th World Day against the Death Penalty.”

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- ¹⁰ Project 39A, "Death Penalty India Report, Vol.2" (National Law University, Delhi, n.d.),
¹¹ <https://eipr.org/en/publications/time-death-row-degrading-treatment>
- ¹² General Assembly, "Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (United Nations, August 9, 2012), UN Doc. A/67/279, <https://undocs.org/A/67/279>.
- ¹³ World Coalition Against the Death Penalty [WCADP], "Living Conditions on Death Row: Detailed Fact Sheet - 16th World Day against the Death Penalty."
¹⁴ <https://www.aljazeera.com/indepth/features/2017/04/world-largest-death-row-170411075033482.html>
- ¹⁵ Death Penalty News, "Iran: The Death Penalty Is an Inhumane Punishment for Death Row Prisoners, Their Families and Society as a Whole," *Striving for a World without Capital Punishment* (blog), October 11, 2018, <https://deathpenaltynews.blogspot.com/2018/10/world-day-2018-death-penalty-inhumane.html>.
- ¹⁶ Ibid.
¹⁷ Ibid.
- ¹⁸ Amnesty International, "Crushing Humanity: The Abuse of Solitary Confinement in Egypt Prisons" (London, 2018), 22
¹⁹ <https://eipr.org/en/publications/time-death-row-degrading-treatment>
- ²⁰ Amnesty International, "Crushing Humanity: The Abuse of Solitary Confinement in Egypt Prisons."
²¹ Ensemble Contre la Peine de Mort [ECPM] and Iran Human Rights [IHR], "Annual Report on the Death Penalty in Iran 2017," March 21, 2018, <http://files.server.idpc.net/library/ECPM-IHR-%20Iran%20report%202017.pdf>. Pag. 36
- ²² Jenny Vaughan and Tran Thi Minh Ha, "Death Row Art: A Rare Glimpse inside Vietnam's Secret Jails," *The Jakarta Post*, March 29, 2018, <https://www.thejakartapost.com/seasia/2018/05/29/death-row-art-a-rare-glimpse-inside-vietnams-secret-jails.html>.
- ²³ Vaughan and Thi Minh Ha.
²⁴ Committee against Torture, "Concluding Observations on the Initial Report of Viet Nam" (United Nations, December 28, 2018), UN Doc. CAT/C/VNM/CO/1, <https://undocs.org/CAT/C/VNM/CO/1>, Para. 32
- ²⁵ Project 39A, "Death Penalty India Report, Vol.2" (National Law University, Delhi, n.d.), 71
²⁶ Ibid., 77
²⁷ Ibid., 79
²⁸ Ibid., 102
- ²⁹ Among others, see: Project 39A, "Death Penalty India Report, Vol.1" (National Law University, Delhi, n.d.); Vietnam Committee on Human Rights [VCHR], "Shrinking Spaces: Assessment of Human Rights in Vietnam During the 2nd Cycle of Its Universal Periodic Review" (France: Paris, February 2018), <http://queme.org/app/uploads/2018/02/Shrinking-spaces-VCHR-2018-EN.pdf>.
³⁰ http://www.worldcoalition.org/media/resourcecenter/EN_FactSheet_WD2018, 6;
<https://www.amnesty.org/en/latest/campaigns/2018/10/death-penalty-cruelty-a-stain-on-governments/>
- ³¹ Vietnam Committee on Human Rights and & Quê Me: Action for Democracy in Vietnam, "Death Penalty: Vietnam Is the World's 5th Top Executioner," February 16, 2017, <http://queme.org/en/death-penalty-vietnam-worlds-5th-worst-executioner/?v=79cba1185463>, 7
- ³² "6th World Congress Against Death Penalty Oslo 2016: The Death Penalty Vietnam" (Vietnam Committee on Human Rights [VCHR], June 2016).
³³ All the information in this paragraph, unless specified, builds upon the report: The Cornell Centre on the Death Penalty World Wide, "Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty."
³⁴ The Abdorrahman Boroumand Centre [ABC] for Human Rights in Iran, "Iran's Drug Policy Reform Briefing Paper," n.d.
³⁵ Iran Human Rights Monitor [Iran HRM], "Cruel And Inhuman; Executions In Iran Annual Report on the Death Penalty in Iran, October 2018," October 9, 2018, <https://iran-hrm.com/index.php/2018/10/08/cruel-and-inhuman-executions-in-iran/>.
- ³⁶ Ensemble Contre la Peine de Mort [ECPM] and Iran Human Rights [IHR], "Annual Report on the Death Penalty in Iran 2017."
³⁷ The Cornell Centre on the Death Penalty World Wide, "Judge for More Than Her Crime: A Global Overview of Women Facing the Death Penalty."