



Cornell Law School

Cornell Center on the Death Penalty Worldwide



**Response to the Call for Inputs
for the**

**Report of the Special Rapporteur on contemporary forms of racism
On intersectionality from a racial justice perspective**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The Cornell Center on the Death Penalty Worldwide

and

The World Coalition Against the Death Penalty

for the 59th Session of the Human Rights Council

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The World Coalition Against the Death Penalty is committed to making visible gender and intersectional discrimination at work in capital punishment as well as to strengthen the protection of women and gender and sexual minorities facing the death penalty.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades

representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

EXECUTIVE SUMMARY

1. This response to the Call for Inputs focuses on patterns of intersectional discrimination pertaining to women in conflict with the law, particularly women under sentence of death or at risk of being sentenced to death.

I. Women charged with capital crimes in the United States experience racism and systemic gender bias.

2. Professor Sandra Babcock of the Cornell Center on the Death Penalty Worldwide at Cornell University Law School, along with colleagues Nathalie Greenfield and Kathryn Adamson, has undertaken comprehensive research of 48 people sentenced to death between 1990 and 2023 in the United States who presented as women at the time of their trials.¹ Through systematic reviews of trial transcripts, habeas corpus petitions, and other contemporaneous documentation,² Professor Babcock’s research reveals systemic gender bias in capital trials in the United States.
3. Of the 48 women, 11 are Black, 6 are Latina, 2 are Asian or Pacific Islander, 1 is Native American, and the remaining 28 are white.³
4. The characteristics of women sentenced to death suggest the relevance of an intersectional approach: “Four experiences are nearly ubiquitous in the lives of women on death row: motherhood, exposure to [gender-based violence], disability, and a lack of prior convictions for acts of violence.”⁴
5. Over 80% of the 48 women on death row had experienced intellectual or psychiatric disabilities.⁵ Trial transcripts and other documentation included evidence that at least 40 of the women had “mental illness, substance abuse disorders, organic brain damage, cognitive impairments, or a combination thereof,” with the most frequent diagnoses being post-traumatic stress disorder or other trauma disorders and depression.⁶
6. Professor Babcock’s research highlights the correlation between motherhood and poverty, observing that “women—and in particular, women of color—are more likely than men to experience economic precarity,” and citing research showing that “[i]ncarcerated women are more likely than men to be poor and commit crimes related to life histories of poverty, victimization, mental health issues, and substance abuse.”⁷ Women who are single parents are dramatically more likely to live in poverty than other women.⁸ Professor Babcock writes: “When we consider that most of the people on death row nationwide are from

¹ Sandra Babcock, Nathalie Greenfield, and Kathryn Adamson, *Women on Death Row in the United States*, 46 *Cardozo L. Rev.* 1 (2024), available for download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4798360.

² *Id.* at 5.

³ *Id.* at 10.

⁴ *Id.* at 8.

⁵ *Id.* at 8-9.

⁶ *Id.* at 15.

⁷ *Id.* at 12.

⁸ *Ibid.*

poorer socioeconomic backgrounds, it is reasonable to assume that most women on death row experienced economic precarity prior to incarceration.”⁹

7. Professor Babcock’s research found that at least 96% of the women on death row had experienced gender-based violence in their lifetimes, and “women of color on death row were most likely to have been repeat victims of GBV: all Black, Latin[a], Asian and Native American women currently on death row have experienced multiple forms of GBV.”¹⁰ In an earlier analysis of the dataset, she concluded that nearly all women of color had experienced child abuse,¹¹ at least 80% of the Black women and 83% of the Latina women had experienced sexual violence, 70% of Black women and 83% of Latina women had experienced physical violence, and 90% of the women of color had experienced psychological violence.¹² Of the women for whom data was available, 95% of women of color had experienced “ongoing abuse,” meaning that their “experiences of violence are rarely one-off events from which they can attempt to move on and heal. Rather, this abuse is recurring and relentless, permeating women’s lives and leaving them in its inescapable shadow.”¹³ Yet in capital proceedings against these women, judicial actors—including prosecutors, judges, and defense attorneys¹⁴—“paper[] over” these experiences of violence, elevating the risk that women will be punished “for actions that are the direct consequence of their trauma.”¹⁵
8. Professor Babcock has highlighted the relevance of the intersection of gender-based violence and marginalized identities.¹⁶ She describes a complex set of factors that “increase the likelihood that Black girls and women receive criminal convictions, which consequently increases their risk of receiving harsher sentences than comparable women in other racial groups.”¹⁷ First, she notes that in the United States, “Black women are particularly vulnerable to violence, especially where that violence comes from an intimate partner,” and “a dangerous picture emerges” because “Black women have less access to anti-violence intervention programs, are more likely to distrust the police, and are consequently less able to seek help from state and nonprofit resources to protect them from harm.”¹⁸ Quoting the National Black Women’s Justice Institute, Professor Babcock highlights that “Black women are arrested and incarcerated more often because Black women’s survival strategies are criminalized, including self-defense or being forced to engage in illegal activities by intimate partners or other who have harmed them physically and emotionally.”¹⁹ Moreover, police, prosecutors, and other criminal legal system actors “are more likely to treat Black women’s crimes as ‘violent’ compared to women of other

⁹ *Id.* at 13.

¹⁰ *Ibid.*

¹¹ Sandra Babcock & Nathalie Greenfield, *Gender, Violence and the Death Penalty*, 53 *California Western International Law Journal* 327, 334-35 (2023), available at <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=2044&context=cwilj>.

¹² *Id.* at 360-61.

¹³ *Id.* at 362.

¹⁴ *Id.* at 375-77.

¹⁵ *Id.* at 335.

¹⁶ *Id.* at 344.

¹⁷ *Id.* at 346.

¹⁸ *Id.* at 345.

¹⁹ *Ibid.*

racial groups” and “are less likely to view Black survivors as sympathetic or in need of help.”²⁰

9. Professor Babcock adds that criminal legal system actors routinely “adultify” Black girls, treating them as though they were adults, and thereby reinforcing the perception that Black girls “need[] less protection and nurturing than white girls, [and] are . . . less innocent than their white peers,” and as a result those actors criminalize Black girls for behavior that would be more likely to result in leniency for white girls.²¹
10. Professor Babcock summarizes the implications of the intersection of race and gender affecting pathways to incarceration: “in the cases of women of color, . . . race- and gender-based discrimination are inseparable. Each amplifies the effects of the other to place women of color at a heightened risk of harm, a heightened risk that state authorities will minimize and disbelieve this harm, and a heightened risk of being criminalized for their response to harm. The result is a system that underprotects Black women as victims and overpenalizes them as perpetrators.”
11. Professor Babcock also found that nearly all of the women of color on death row had had no prior convictions for violent crimes as adults—a greater proportion than their white counterparts.²² She observed that “[t]he absence of a violent criminal history in the lives of women in our dataset suggest that legal actors decide which women deserve the death penalty based on other criteria.”²³ Her research found that while prosecutors dehumanize both male and female defendants in capital cases, “the dehumanization of women is often deeply gendered.”²⁴ She concluded that “women’s capital sentences are best explained by examining the events of their lives within a larger social context *and* by analyzing how those experiences—and the women themselves—were treated within the legal system.”²⁵
12. Professor Babcock explains the intersection of gender bias and racial bias in capital cases as follows:

I think that the most pressing issue is the failure of the courts to recognize gender bias. . . . The gender bias is so normalized in our society, to an extent that that I think is very different from racial bias. Racial bias is endemic in the application of the death penalty, it is pernicious and I’m not drawing a false equivalence. But what I do think is true is that there has been a lot more focus on how racial bias taints the application of the death penalty, whereas gender bias has been largely tolerated. And of course, in the case of women of color, with multiple intersecting, intersecting identities, they experience the effects of both racial and gender bias, as well as other forms of bias that exist depending on their identities. So I think that this, you know, this ignorance and the willful sort of disregard, particularly by courts, is the biggest problem that we need to overcome. Training of defense teams, of

²⁰ *Id.* at 345-46.

²¹ *Id.* at 346.

²² Babcock, Greenfield, & Adamson, *supra* note 1, at 17.

²³ *Id.* at 21.

²⁴ *Id.* at 50.

²⁵ *Ibid.*

course, is critical. And defense teams really need to be objecting more to the injection of gender bias when it happens.²⁶

13. Professor Babcock has highlighted four case studies of women of color sentenced to death in the United States that illustrate many of the issues described above:

- Melissa Lucio was the first Latina woman sentenced to death in Texas. She was sentenced to death for her alleged involvement in the death of her two-year-old daughter. Police had arrested and questioned both Melissa and her life partner, but when interrogating Melissa, police interrupted her more than 50 times while she maintained her innocence and repeatedly berated her for her parenting skills. When interrogating her partner, police expressed sympathy for how difficult it must have been for him to be in a household with many children, and simply let him tell his story with minimal interruptions. Ultimately, forensic evidence showed that the child died not from abuse, but from complications resulting from falling down a flight of stairs a few days prior to her death.²⁷ When a defense expert testified that Melissa had reported experiencing childhood sexual abuse, the prosecutor suggested that the expert should have “verified” her allegations by interviewing her abusers, thereby encouraging the jury to dismiss this evidence of abuse.²⁸
- A Texas court sentenced Erica Sheppard, a Black woman, to death for her involvement as a nineteen-year-old in a codefendant’s murder of a person during a robbery gone wrong. She had been sexually abused as a child, had experienced multiple rapes as an adolescent, and an intimate partner had repeatedly and savagely beaten her. Even though an appellate judge later said that her life history was so horrific that it could have persuaded a jury to give her a sentence other than death, her court-appointed defense attorney presented only “isolated snippets” of the abuse and trauma she had experienced. And in response, the prosecutor made light of the intimate partner violence, asking, “Any bruises, any scratches? Any fear? She was not physically abused; but even if she was, what kind of excuse is that?”²⁹
- A Florida court sentenced Margaret Allen, a Black woman, to death for murder. Throughout her life, she had been repeatedly raped and viciously assaulted. Multiple family members subjected her to sexual assault when she was a child. She had been hospitalized at least three times for intimate partner violence from three different partners, and she had sustained multiple traumatic head injuries resulting in brain damage. Her defense attorney, however, presented only brief testimony from a family member about some of the intimate partner violence and he failed to mention any of the trauma during his closing argument. Instead, he asked the jury not to sentence her to death because she had been “living in the hood, so to speak,” an³⁰d because she had grown up in a “culture” of “drugs, thugs and violence,”

²⁶ *Gender and the Death Penalty with Sandra Babcock*, Death Penalty Information Center, Nov. 28, 2023, <https://deathpenaltyinfo.org/resources/podcasts/discussions-with-dpic/gender-and-the-death-penalty-with-sandra-babcock>.

²⁷ *See id.*; Rachel Nostrant, *Texas Judge Finds Mother on Death Row Innocent in Daughter’s Death*, New York Times, Nov. 16, 2024, <https://www.nytimes.com/2024/11/16/us/melissa-lucio-texas-death-row-innocent.html>.

²⁸ Babcock & Greenfield, *supra* note 11, at 383-84.

²⁹ *Id.* at 377-78.

³⁰ *Id.* at 389-90.

invoking her “connection to a dangerous Black community.” As Professor Babcock explained, “defense attorneys, like prosecutors, can infect a woman’s trial with intersectional bias. The defense attorney’s failure to explain why Ms. Allen’s experiences of childhood abuse, rape, and intimate partner violence were mitigating was in itself a complete dereliction of his duty to defend her. . . . [H]is use of coded language invoked racist, dehumanizing stereotypes that increased the likelihood of a death sentence.”³¹

- A California court sentenced “Grace Connell,” a woman of color, to death for murder. The prosecutor tried to discredit evidence that defense counsel had introduced showing that when Grace was 11 years old, a man twice her age repeatedly raped her. The prosecutor characterized Grace as a “mature 11-year-old” and asserted that she had been in a “consensual relationship” with the perpetrator. Professor Babcock highlights this case as an example of the tendency of judicial actors to “adultify” girls of color, prompting the jury to think of Grace “as a willing participant in her own victimization, rather than an innocent child who was deserving of protection,” and “minimize[ing] the mental health consequences of [the] sexual abuse,” despite expert testimony of trauma.

II. Women belonging to ethnic minority groups and women who are foreign nationals in many countries face intersectional discrimination, particularly when charged with capital crimes.

14. In Iran, which is one of the world’s two leading executioners of women, women belonging to ethnic minority groups may face double discrimination when they are in conflict with the law.³²
15. The Cornell Center on the Death Penalty Worldwide has highlighted that in some countries, foreign migrant workers, including foreign women, many of whom are domestic workers, are sentenced to death in disproportionate numbers.³³ For example, as of 2018, 8 of the 9 women on death row in the United Arab Emirates were foreign nationals, and most of them were domestic workers.³⁴ Female domestic workers in the UAE who leave their employers due to abusive work conditions or who make complaints against their employers are sometimes charged with capital crimes such as witchcraft or sex outside of marriage.³⁵ Migrant workers “are particularly vulnerable to unfair capital trials: they are poor, they lack linguistic, cultural, and institutional knowledge of the criminal justice process, and they are often denied access to effective legal representation and translation. In addition, language barriers, illiteracy, and economic vulnerability may leave migrant workers at

³¹ *Id.* at 379-81.

³² The Advocates for Human Rights, Iran Human Rights, World Coalition Against the Death Penalty, and ECPM, *Iran’s Compliance with International Convention on the Elimination of All Forms of Racial Discrimination: Response to the List of Themes Relating to the Death Penalty*, 4 July 2024, ¶¶ 17-23, <https://www.theadvocatesforhumanrights.org/Res/Iran%20CERD%20DP%20FINAL.pdf>.

³³ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 17, <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³⁴ *Ibid.*

³⁵ *Ibid.*

particular risk of forced and false confessions.”³⁶ Many women on death row in Saudi Arabia are migrant workers who do not speak Arabic, and “[t]heir status as foreigners, in tandem with unequal status of women in Saudi society, subjected them to compounded bias in the criminal justice system.”³⁷

16. In Iraq, courts have sentenced foreign nationals, including at least 15 Turkish women and women from at least 7 other countries, to death after finding them guilty of joining Daesh, while evidence suggests that many or all of them had been coerced by their husbands to enter Daesh-controlled territory and they had not engaged in violent acts.³⁸
17. In Kuwait, women migrant domestic workers are particularly vulnerable to workplace abuses, and some women have been sentenced to death for murdering members of their employers’ families. Little is known about the circumstances of these cases.³⁹
18. In Indonesia, women foreign nationals are most likely to be sentenced to death for drug-related offenses, typically when they carry drugs into the country as “mules.” These foreign nationals experience discrimination in criminal legal proceedings, including by being denied access to interpretation, and courts generally fail to take into consideration gender-based violence and other relevant mitigating evidence.⁴⁰

³⁶ Ibid.

³⁷ *Id.* at 18.

³⁸ The Advocates for Human Rights, Abolition Death Penalty of Iraq Organization, World Coalition Against the Death Penalty, *Iraq’s Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination: Suggested List of Themes Relating to the Death Penalty*, 4 July 2024, ¶ 25, <https://www.theadvocatesforhumanrights.org/Res/Iraq%20CERD%20DP%20FINAL.pdf>.

³⁹ See The Advocates for Human Rights and World Coalition Against the Death Penalty, *Kuwait’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: The Death Penalty*, 15 Apr. 2024, ¶ 10, <https://www.theadvocatesforhumanrights.org/Res/Kuwait%20CEDAW%20DP.pdf>; The Advocates for Human Rights, World Coalition Against the Death Penalty, and the Cornell Center on the Death Penalty Worldwide, *Kuwait’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: Suggested List of Issues Relating to the Death Penalty*, 30 Jan. 2023, ¶¶ 15-19, <https://www.theadvocatesforhumanrights.org/Res/Kuwait%20CEDAW%20DP%20FINAL.pdf>.

⁴⁰ The Advocates for Human Rights et al., *Indonesia’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: Suggested List of Issues Relating to the Death Penalty*, 15 June 2020, ¶¶ 16-17, 20-21, https://www.theadvocatesforhumanrights.org/Res/indonesia_cedaw_loi_tahr_wcadp_final.pdf.