Compounded Violence: Domestic Abuse and the Mandatory Death Penalty in Ghana and Sierra Leone

Keywords: Mandatory death penalty, battered woman syndrome, international human rights law, diminished responsibility, mitigating factors, procedural justice

Abstract:

As women on death row represent only five per cent of the world's total death row population, their experiences remain largely understudied. This paper applies a gendered perspective to women sentenced to a mandatory death penalty in the West African countries of Ghana and Sierra Leone. At present, there are six women on death row in Ghana and two women on death row in Sierra Leone. All eight women are sentenced to mandatory death for murder. However, interviews with the women on death row suggest that their offenses do not meet the threshold of 'most serious crimes.' Instead, many are convicted for acts committed in retaliation following violence against them. I argue that ignoring essential contextual facts concerning domestic violence violates Articles 6(1) and 6(2) of the International Covenant on Civil and Political Rights (ICCPR) which makes clear that 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes' and cannot amount to an arbitrary deprivation of the right to life. I then consider the argument for abolishing the mandatory death penalty in favour of a discretionary sentencing regime. However, a survey of mental health resources available in both countries suggests that Ghana and Sierra Leone do not have the mental health resources to support a discretionary capital punishment system in practice. This paper concludes that without adequate resources, the most effective way for Ghana and Sierra Leone to protect human rights standards is to abolish the death penalty altogether.

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I. Introduction

> When Aminata[1] tells her abusive boyfriend that she no longer wants to be together, he does not handle the news well. Avoiding him is especially difficult for Aminata, as they live in the same compound and he curses at her every time their paths cross. One morning, Aminata's abusive ex-boyfriend appears at her home especially agitated. 'Come out to the street, come out to the street now and tell me you don't want me,' he yells. When Aminata goes down to meet him, he follows her into her home and begins to beat her with a rubber pipe. During the struggle, Aminata falls to the ground and reaches for a knife to defend herself. She strikes him and runs. It is not until her arrest that she learns of his death. At trial, Aminata receives the only available sentence for murder in Sierra Leone – mandatory punishment by death.[2]

Aminata's story is not an isolated incident. To date, 106 countries have abolished the death penalty for all crimes (Amnesty International, 2018). However, 29 countries (The Death Penalty Project, 2018) retain the mandatory death penalty as 'automatic upon conviction for homicide or a small number of other serious felonies' (Novak, 2016, p. 1). In systems retaining the mandatory death penalty, everybody who is convicted of a particular offense is given the same sentence of death (The Death Penalty Project, 2018). The mandatory death penalty treats all offenders as equally culpable, without considering mitigating factors, including those who have killed in self-defence after years of domestic violence. Its application to domestic-abuse related crimes is especially concerning. Of the estimated 500 women on death row worldwide, we know that many – and the female prison population in general – come from abusive backgrounds (Cornell Law School, 2018; Mahtani, 2018). Research also suggests that a majority of the women are sentenced to death for murder, 'often in relation to the killing of family members and in a context of gender-based violence' (Lourtau and Pia Hickey, 2018, p. 4). Despite this knowledge, the administration of the mandatory death penalty

[1] Name is deliberately changed to a pseudonym.

[2] Original interview conducted by AdvocAid in 2018. See Appendix A for the original version. Aminata originally received the mandatory death sentence, but this was commuted to life in 2011. AdvocAid took her case to the Court of Appeal and she was found not guilty and released in January of 2019.

typically overlooks essential facts of a capital defendant's case when women are charged with murder in the context of self-defence.

As women on death row represent less than five per cent of the world's total death row population, their experiences remain understudied (Cornell Law School, 2018). This paper applies a gendered lens to examine the use of mandatory capital punishment for women in Ghana and Sierra Leone, West Africa. For the purposes of this paper, gender is understood to produce distinct vulnerabilities for women sentenced to mandatory death. The first section provides a general history of the mandatory death penalty. The automatic imposition of the death penalty can be traced back to laws that originated under British colonial rule (Novak, 2016). Despite the United Kingdom's formal abolition of the death penalty in 1965, the mandatory death penalty remains in many former British colonies today (Novak, 2016). For the countries that retain the mandatory death penalty, I outline its main justifications and criticisms.

The second section presents data on the number of women on death row and the crimes they were convicted for. There are currently two women on death row in Sierra Leone and six women on death row in Ghana. All are sentenced to mandatory death for murder. However, interviews with the women on death row suggest that many have been charged with murder committed in retaliation following violence against them. I discuss the prison conditions and due process barriers for women held on death row, as well as provide an overview of gender-based violence in both countries. I conclude that ignoring essential facts of domestic violence violates Articles 6(1) and 6(2) of the International Covenant on Civil and Political Rights (ICCPR), where 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes' and cannot amount to an arbitrary deprivation of the right to life.

The final section considers alternatives to mandatory capital punishment, such as a discretionary capital sentencing system. To demonstrate how a discretionary capital sentencing system might work in practice, I consider the United States and the Caribbean as case studies. However, implementation of a discretionary capital sentencing system faces challenges in countries with limited medical facilities and mental health services. Statistics on mental health data suggest that Sierra Leone has one active psychiatrist for the entire population of 7.5 million people.[3] In 2017, it was estimated that Ghana has 14 psychiatrists for a population of over 28.83 million.[4] I conclude that without the resources in place to adequately support a discretionary capital sentencing system, the most effective way for Ghana and Sierra Leone to protect human rights standards is to abolish the death penalty altogether.

Throughout this paper, each section revolves around a central argument: Ghana and Sierra Leone are failing to comply with the restrictions on capital punishment set out in Article 6 of the ICCPR.[5] Specifically, ignoring relevant contextual information about domestic violence experienced by the perpetrator violates Article 6(1) and Article 6(2) of the ICCPR, where 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes' and cannot amount to an arbitrary deprivation of the right to life. Without taking into account the individual circumstances of the offense, no distinction is made between different degrees of seriousness.

[3] Confirmed in email correspondence with staff at AdvocAid. April 1, 2019.

[4] This estimate is based on a conversation with staff at The Death Penalty Project and The Fair Justice Initiative. April 1, 2019.

[5] For a complete text of Article 6 of the ICCPR, see Appendix C.

II. Methodology

This paper was developed in collaboration with The Death Penalty Project (DPP), London. The Death Penalty Project is a legal action charity based at the London law firm, Simons Muirhead & Burton. As women on death row in West Africa are an under-researched population, this informed my decision to select Ghana and Sierra Leone as my primary countries of focus. At present, research on women on death row in West Africa is largely characterised by anecdotal description with little statistical analysis. While the research presented in this paper is an accurate reflection of available data through to July 2019, there may be additional legislative developments between submission and assessment.

Precise figures on gender-based violence are difficult to obtain. Research suggests that a high number of women incarcerated for killing their partners experience prior domestic abuse (Walker, 2002). However, there are several methodological challenges to determining the exact number of women on death row for killing their abusers. Foremost, domestic violence cases are often difficult to identify, as abuse is not always mentioned as a part of the case defence strategy (Mahtani, 2018). This is highlighted in Cornell Law School's (2018, p. 11) report:

> Women facing capital prosecution arising out of domestic abuse suffer from gender discrimination on multiple levels. To begin with, evidence of abuse is difficult to gather. Most domestic violence occurs without any adult witnesses, and female defendants may be reluctant to speak out due to stigma, shame, and lack of trust in police and judicial proceedings. Even if evidence of domestic violence is presented to the court, women face substantial barriers in convincing a court that they acted in self-defence.

As an example, consider the United States case of *Owens* v. *State* (1995).[6] Owens was originally sentenced to death for hiring someone to kill her husband. Although Gaile Owens was eventually granted clemency two months from her

[6] *Owens v State*, 908 S.W.2d 923 [1995]

execution date, her status as a battered woman was not introduced during her original trial. Owens did not want her young sons to know about the physical and sexual abuse she suffered from their father (Guardian, 2011).

Data was difficult to obtain in my research on women on death row in Ghana and Sierra Leone as neither country has a formal federal agency which tracks female prisoners sentenced to death. In Ghana, a further challenge stems from lost documentation. Ghana court service only began to digitalise court submissions in 2017 with the introduction of a digital address system. As a result, the cases determined prior to 2017 are paper-based. Many inmates on death row articulate that they do not know where their files are located or report giving them to a family member for safekeeping.[7] As such, I identified the six Ghanaian women on death row and their charges through correspondence with staff members at The Fair Justice Initiative and Legal Resources Centre, Ghana. The two women on death row in Sierra Leone were identified by staff members at AdvocAid. This paper further relies on an extensive review of relevant policy papers, newspaper articles, academic reports, and books. Data is also collected from trial materials such as public court documents, international and domestic legal documents, and criminal sentencing data. The photos of Freetown Female Prison, Sierra Leone, are credited to an earlier AdvocAid publication.

Throughout, I incorporate pre-existing interviews with women on death row. All of the interviews, unless credited to other publications, were provided to me by outside organisations. The interviews from Ghana were originally conducted for The Fair Justice Initiative and The Death Penalty Project. The ones from Sierra Leone were conducted by staff members at AdvocAid. All of the interviews were conducted in the interviewee's native language and later translated into English. I did not conduct the

[7] Based on email correspondence with staff at The Fair Justice Initiative. February 18, 2019.

original interviews, and therefore, my analysis is limited to the translated answers given to the questions that were asked. Additional information was gathered during telephone, Skype, and email correspondence with staff at each organisation. To protect the identities of the women, I have chosen to use pseudonyms. Anonymity is especially important for any women who have cases under appeal. For interviews that I have summarised, their original format is included in the Appendix.

Like the organisations I have worked with to gather data on the death penalty, I oppose capital punishment in all instances, regardless of the crime. While my political and personal beliefs undoubtedly influence my objectivity as a researcher, the ultimate aim of this paper is to highlight the arbitrary, disproportionate nature of the *mandatory* death penalty through the lens of domestic abuse related crimes. Awareness of the human rights abuses associated with mandatory capital punishment makes it easier to challenge its legitimacy both in law and in practice. My hope is for this paper to offer comprehensive, up-to-date information for capital punishment abolition and policy advocates. While this paper focuses on women sentenced to mandatory death in Sierra Leone and Ghana, it has implications for individuals facing mandatory capital punishment in other jurisdictions.

III. The Mandatory Death Penalty

a. Common Law History

Globally, the mandatory death penalty is on a historical decline in both its retention and frequency of use (Hood and Hoyle, 2015). The automatic imposition of the death penalty can also be traced back to laws originating from British colonial rule (Novak, 2016). Kadri (2016, p. 7) explains how many imperialist British laws reflect a 'vindictive approach to punishment that characterized the United Kingdom of the early nineteenth century – a period when it had more capital offences than anywhere else in the world.' Within the British Empire, the mandatory death penalty was historically assigned in response to murder and other violent felonies (Novak, 2016).

In 1837 the British parliament eventually reduced its application of the mandatory death penalty to murder, attempted murder, and treason (Kadri, 2016). In July 1955, Ruth Ellis was the last woman to be executed in the United Kingdom after being convicted for the murder of her boyfriend, David Blakely (Seal, 2011). Ellis' case has been described by scholars as 'the absence, in the 1950s, of any understanding of the experiences of abused women and, indeed, any inkling of the questions of discrimination and unequal treatment' (Minkes and Vanstone 2006, p. 404). Indeed, Ellis' testimony of Blakely's violence towards her, such as punching her in the stomach and causing her to miscarry, was not included in her defence attorney's original argument (Seal, 2011).

Despite the United Kingdom's abolition of the mandatory death penalty for murder in 1965, the mandatory death penalty is retained in many former British colonies (Novak, 2016). Both Ghana and Sierra Leone, once British colonies, retain the mandatory death penalty for murder. In 2018, The Death Penalty Project reported that nine out of 52 Commonwealth nations retain the mandatory death penalty: Brunei,

Ghana, Malaysia, Nigeria, Sierra Leone, Singapore, Sri Lanka, Tanzania, and Trinidad and Tobago. Three of these countries, Malaysia, Nigeria, and Singapore, actively carry out executions of sentenced offenders (Middleton and Clift-Matthews, 2018).

b. A Global Shift

Though a few African countries retain the mandatory death penalty, the African continent has experienced a shift away from the death penalty. As of 2018, 20 out of 54 African countries have abolished the death penalty for all crimes: Angola, Benin, Burundi, Cape Verde, Republic of Congo, Cote D'Ivoire, Djibouti, Gabon, Guinea, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo (Amnesty International, 2018).

Other African jurisdictions have made important judicial rulings contributing to the overall decline in the mandatory death penalty (Fitzgerald and Starmer, 2007). In Uganda's 2005 landmark case, *Kigula et al* v. *Attorney General,*[8] mandatory capital punishment was ruled unconstitutional because it does not provide an opportunity for those accused to mitigate their sentences. Soon after, in the 2007 Malawi case, *Francis Kafantayeni et al* v. *the Attorney General,*[9] the High Court unanimously ruled that the mandatory death sentence for murder in Section 210 of the Penal Code violates the constitutional protection against inhuman treatment or punishment and the right to a fair trial. As a result, the death penalty may only be applied in the case of murder after judicial consideration of 'the manner in which the murder was committed, the means used to commit the offense, the personal circumstance of the victim, the personal circumstances of the accused and what might have motivated the commission of the

[8] *Kigula & Ors v Attorney General* [2005] UGCC 8; Attorney General v Kigula & Ors [2009] UGSC 6 (Supreme Court)

[9] *Kafantayeni & Ors v Attorney General* [2007] MWHC 1, 46 ILM 566

crime' (Mahtani, 2018). In December 2017, debate over the mandatory death penalty in Kenya was resolved in *Muruatetu & Mwangi* v. *Republic of Kenya* when the Supreme Court referenced the mandatory death penalty as 'out of sync with the progressive Bill of Rights enshrined in our Constitution', and a 'colonial relic that has no place in Kenya today'.[10]

Nonetheless, the Ghanaian government has resisted legal challenges to the mandatory death penalty both in the domestic courts and international tribunals. In terms of the domestic legal framework, Section 46 of Ghana's Criminal and Other Offences Act (1960) holds that 'a person who commits murder is liable to suffer death,' which has been interpreted as a mandatory penalty.[11] In addition, Article 13(1) of Ghana's Constitution (1993) also states that 'no person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.' This exception to the right to life would preclude a challenge to the death penalty *per se.*

In a 2015 public opinion study conducted by Tankebe et al., (2015) there was some indication that the Ghanaian public would not oppose a discretionary system. Conducted in the capital city of Accra, Ghana, nearly half (48.3 per cent) of the 2,460 survey respondents were opposed to the death penalty in general. For those against complete abolishment of the death penalty, seven out of 10 nonetheless expressed support for a more discretionary death penalty system. In the case of murder, two-thirds of respondents chose to replace the mandatory death penalty with life without the possibility of parole. Only nine per cent of respondents indicated that they very strongly supported mandatory death (Tankebe et al., 2015).

[10] Petitions No. 15 & 16 of 2015, paras 64 and 67

[11] *Johnson v Republic* [2011] 2 SCGLR 601

The Ghanaian Constitution has been under review since January 2010 and in 2011 it was recommended by the Constitution Review Commission to abolish the death penalty and replace it with life imprisonment (Amnesty, 2017). According to a 2017 report by Amnesty International, however, its implementation 'is currently stalled as a result of unspecified delays in the constitutional amendment process' (p.5). When the case of *Dexter Eddie Johnson* v. *Ghana*[12] was brought before the UN Human Rights Committee, the committee held in 2014 that the *mandatory* imposition of the death penalty under Section 46 of Ghana's Criminal and Other Offences Act (1960) amounted to an arbitrary deprivation of the right to life in breach of its international obligation under Article 6(1) of the Covenant. However, this finding is not binding in domestic law and Ghana has failed to comply with the decision date. When a further challenge to the mandatory death penalty was brought before the African Court of Human and People's Rights, the Court declared the application inadmissible on the basis that the matter has already been considered by another international body, namely the UN Human Rights Committee (Middleton and Clift-Matthews, 2018). Despite international obligations under the ICCPR, Ghanaian courts continue to impose mandatory death sentences for those convicted of murder (Amnesty International, 2017).

In Sierra Leone, whilst the Constitutional Review Committee (CRC) recommended abolition of the death penalty, there has been very little traction in regard to the mandatory death penalty. In May of 2014, former Attorney General and Minister of Justice Franklyn Bai Kargbo informed the United Nations that Sierra Leone would abolish the death penalty. That same year, current President Ernest Bai Koroma requested legislation to be drafted to end the death penalty entirely (Amnesty

[12] *Johnson v Ghana*, Comm. No. 2177/2012

International, 2014). These declarations have yet to be put into action. Since 2014 there has been an increase in death sentences handed down and in October 2016, the Minister of Internal Affairs 'tested and prepared' the gallows (Inveen, 2016). In 2017, the government rejected the recommendations of the CRC to abolish the death penalty altogether.[13]

c. Justifications

The information above suggests that both Ghana and Sierra Leone could amend their mandatory capital punishment policies in the near future. In the meantime, however, both countries cite retribution and deterrence as justifications for the automatic imposition of death. This following section critically engages with these main justifications for the mandatory death penalty.

i. Retributivism

Retribution stems from the idea that the punishment must fit the crime (Kadri, 2016). Some would argue that the mandatory capital punishment for murder is justified because 'a life for a life' is the most proportionate response available (Hood and Hoyle, 2015, p. 339). From a legal perspective, Article 6(2) of ICCPR states that 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the *most serious crimes* in accordance with the law in force at the time of the commission of the offence and not contrary to the present Covenant.' However, the mandatory death penalty does not distinguish between 'the most serious crimes.' By failing to take into account the individual circumstances of their case, each individual is treated as if they are 'equally culpable and equally deserving of death' (Hood and Hoyle, 2015, p. 337). This raises serious concerns of proportionality, as the mandatory

[13] Based on correspondence with staff at The Death Penalty Project. May 31, 2019.

imposition of death does not consider whether such a response is a proportionate punishment. Instead, all murder is treated the same.[14]

The inability to put forward mitigation about the circumstances of the offense is particularly damaging for women who are convicted for acts committed in retaliation following violence against them. In a discretionary capital sentencing system, mitigating factors, such as a history of abuse of the offender by the victim, help to protect against disproportionate sentencing. However, mandatory capital punishment does not allow for a history of abuse to be considered. In a study published in September 2018 by the Cornell Centre on the Death Penalty Worldwide, the researchers explain how a woman's history of abuse is 'simply irrelevant' within a mandatory capital punishment jurisdiction, as the death penalty is 'automatically imposed for death-eligible offenses without consideration of the offender's background or the circumstances of the crimes' (Cornell Law School, 2018, p. 4). This contradicts the idea that 'the punishment must fit the crime' (Hood and Hoyle, 2015). Even if a judge wanted to consider evidence of abuse, they are bound by mandatory capital punishment sentencing guidelines (Novak, 2016).

In response, one could argue that there are already several gender-specific protections in place. Article 6(5) of the International Covenant on Civil and Political Rights protects pregnant women and juveniles from being executed. It states, 'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women' (Article 6.5). The 1984 Economic and Social Council Resolution (1985/50; Safeguard 3) extends this protection to mothers with recently born children. However, while these protections are accepted in

[14] General Comment on Article 6, General Comment No. 36 (CCPR/C/GC/R.36/Rev.4)

most retentionist countries, The Death Penalty Worldwide reports variations in the length of time retentionist countries delay execution following child delivery (Hoyle, 2015). Furthermore, Cornell Law School's 2018 publication shows how such protections create a dichotomy of good and bad women where 'women who have no children, and especially whose offenses result in harm to children' face additional scrutiny in capital trials (p. 7). This disadvantage is heightened by the fact that the mandatory death penalty ignores essential facts of a capital defendant's case, such as a background of domestic or sexual abuse (Callamard, 2017).

ii. Deterrence

Mandatory death sentences are also held to be an effective deterrent (Kadri, 2016). Deterrence theory assumes that with the mandatory death penalty, individuals considering serious offenses will only be deterred if they know that a conviction will result in certain death (Hood and Hoyle, 2015). Deterrence theory also assumes that the killing of an offender will dissuade others from committing the same crime (Amnesty International, 1989). However, this idea has been refuted in several jurisdictions around the world. In the *Furman v. Georgia* (1972) case, United States Supreme Court Justice Marshall concluded: 'In light of the massive amount of evidence before us, I see no alternative but to conclude that capital punishment cannot be justified on the basis of its deterrent effect'.[15]

The argument that mandatory capital punishment promotes deterrence has several major flaws. First, justifications of deterrence incorrectly assume that each offender rationally calculates the prospective consequences before committing a serious crime. This is an unrealistic assumption for women charged with murder when

[15] *Furman v Georgia* 408 U.S. 238 [1972]

defending themselves, as their actions are likely to be a reaction to an immediate threat of violence from their partner, perhaps fatal violence.

Second, the theory of deterrence is contradicted by the small number of people sentenced to death who are actually executed (Hood et al., 2009). Indeed, Ghana and Sierra Leone are considered to be abolitionist in practice (Amnesty International, 2018), given that the last execution was carried out in 1993 in Ghana (Amnesty International, 2017) and 1998 in Sierra Leone (Amnesty International, 2018). This idea was echoed by Justice White in *Furman* v. *Georgia* (1972*)*, where he states: '..that the death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system'.[16] This was further recognised in *Makwanyane,*[17] when the South African Constitutional Court rejected the argument that the death penalty deters crime:

> We would be deluding ourselves if we believe that execution of ... a comparatively few ... people each year ... will provide the solution to the unacceptably high rate of crime ... The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system.[18]

Finally, no reliable research suggests that the death penalty is a more effective deterrent compared to other punishments (Penal Reform International, 2015). An expert in deterrence studies, Jeffrey Fagan challenges the reliability of recent studies. In Hood and Seemungal's (2009, p. 2) report for The Death Penalty Project, Fagan explains how the majority of deterrence studies rely on 'inappropriate methods of statistical analysis, failures to consider all the relevant factors that drive murder rates, missing data on key variables in key states, the tyranny of a few outlier states and years, and the absence of any direct test of deterrence.' Further methodological critiques include a lack of

[16] *Furman v Georgia* 408 U.S. 238 [1972]

[17] *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3

[18] Ibid.

replication and reliable comparison. In 2008, close to 88 per cent of surveyed criminologists did not believe that the death penalty was an effective deterrent (Radelet and Lackock, 2009). When the National Research Council surveyed over three decades of research on deterrence, they found that studies on the deterrent effect on murder rates were largely inconclusive (Nagin and Pepper, 2012).

While retribution and deterrence are the key justifications for the mandatory death penalty in both Ghana and Sierra Leone, these rationales have serious flaws. The backward-looking philosophy of retribution, and in particular the 'just-deserts' notion that the 'punishment must fit the crime' is difficult to satisfy given that the mandatory death penalty does not distinguish between the individual circumstances of each case. Likewise, theories of deterrence incorrectly assume that each offender rationally calculates the potential consequences before committing a serious crime. The idea that individuals will only be deterred if they know that a conviction will result in certain death is contradicted by the small number of people sentenced to death who are actually executed (Hood et al., 2009). To date, no reliable research suggests that the mandatory death penalty is a more effective deterrent compared to life imprisonment or a long term of imprisonment under a discretionary death penalty system (Penal Reform International, 2015). As such, we are left with a system of punishment that is hard to justify according to sentencing rationales. The following section will examine how the mandatory death penalty is applied in practice in the countries of Ghana and Sierra Leone.

IV. Women on Death Row in Ghana and Sierra Leone

Country	Number on Death Row	Number of Women
Sierra Leone	50	2
Ghana	160	6

Table 1: Individuals currently under sentence of death in Ghana and Sierra Leone.

Available data estimates a total death row population of 160 individuals in Ghana and 50 individuals in Sierra Leone. Of these, there are six women on death row in Ghana and two women on death row in Sierra Leone (See Table 1). All eight women are sentenced to mandatory death for murder. In both countries, hanging is the method of execution. [19]

Ghana and Sierra Leone are both considered to be abolitionist in practice. While both countries continue to sentence individuals to death, those sentences have not been executed since 1993 and 1998 respectively (Hood and Hoyle, 2015). In their factsheet on prison conditions for women facing the death penalty, Penal Reform International (Lourtau and Hickey, 2018, p. 2) explains how women on death row are detained for long periods of time in conditions 'not designed for women generally or for long-term women prisoners specifically.' While very few women are executed, many have spent years detained on death row in especially grim conditions.

a. Intersectionality

While women make up a smaller number of those held on death row, they can represent some of the most vulnerable in our society. Throughout this paper, I argue that women sentenced to mandatory death face gender bias when relevant contextual

[19] According to staff at Legal Resources Centre (LRC), Ghana and AdvocAid, Sierra Leone. May 6, 2019.

information about domestic violence is ignored. While this gendered lens of analysis is important, it is equally important to recognise that women on death row experience additional compound, intersecting forms of discrimination (Crenshaw, 1989, 1991). Cornell Law School's (2018) report explains how in some countries, women of certain ethnic and religious minorities are especially vulnerable to capital prosecution. A majority of death row prisoners are also indigent and suffer from mental illness. This interaction between various forms of power and discrimination is commonly referred to as intersectionality, a term coined by Dr Kimberlé Crenshaw (1989) in her work on Black feminist thought and critical race theory (Parmar, 2017). Crenshaw (1989, p. 140) writes, 'Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.' In her work, Crenshaw (1989) uses the metaphor of a road intersection to highlight how different identities intersect to form varying forms of discrimination.

As an example, Cornell Law School's (2018, p. 6) report highlights how gender and poverty often 'operate intersectionally to create uniquely precarious conditions for women facing capital sentences.' When we think about *who* is sentenced to death row, women from lower socioeconomic backgrounds are especially vulnerable as poverty impedes their ability to retain qualified and effective legal counsel. Women offenders with language barriers or who are unable to read and interpret legal documents are further hindered in their ability to participate in their defence and appeals. Financial dependence on an abusive partner might limit a woman's willingness to report abuse as part of a case defence strategy (Cornell Law School, 2018).

Once sentenced to death row, this vulnerability is further compounded by poor prison conditions and limited access to gender-specific healthcare (Mahtani, 2018). The

collateral consequences of incarceration – such as loss of child custody and isolation from family – place additional burdens on women (Amnesty International, 2012, 2017). Accordingly, Crewe et al. (2017, p. 1376) argue that female prisoners experience prison to be 'more acutely painful and problematic' than male prisoners. Nonetheless, Liebling and Crewe (2012) explain how the criminal justice system is largely structured around a male treatment model. Cornell Law School's (2018, p. 8) publication point out that it is 'often men who tell the stories of women facing the death penalty.' Although female prisoners report more painful experiences of incarceration, prison environments largely ignore trauma experienced by these women. The following section will outline specific prison conditions and accompanying vulnerabilities for women held on death row in Sierra Leone and Ghana.

b. Conditions on Death Row

Women sentenced to death are held in the female wing of Nsawam Central Prison in Ghana (Amnesty International, 2017) and the Freetown Female Correctional Centre in Sierra Leone (Mahtani and O'Gorman, 2018). Both facilities are blighted by overcrowding, isolation, and inadequate female-specific healthcare.

In Ghana, research by Amnesty International concludes that 'conditions within prisons in Ghana do not meet the obligations set out in national law and international law and standards' (2012, p. 35). Overcrowding and inadequate food and medical care are listed as primary concerns. A 2018 report by the U.S. Department State (2018b, p. 4) describes the following conditions in Nsawam Central Prison:

> Officials held much of the prison population in buildings that were originally colonial forts or abandoned public or military buildings, with poor ventilation and sanitation, substandard construction, and inadequate space and light. The Prisons Service periodically fumigated and disinfected prisons, but sanitation remained poor. There were not enough toilets available for the number of prisoners, with as many as 100 prisoners sharing one toilet, and toilets often overflowed with excrement.

Only four nurses are available for the hundreds of prisoners at Nsawam Prison and there is only one physical assistant in the women's section (Amnesty International, 2017, p. 16). Food is provided once a day; often a bowl of cornmeal with limited nutritional value (U.S. Department of State, 2018b, p.8).

In Sierra Leone, women on death row are held at the Freetown Female Correctional Centre (Mahtani and O'Gorman, 2018). The prison holds about 90 women prisoners and their children (Mahtani and O'Gorman, 2018). The capital of Freetown, Sierra Leone has frequent rainfall, which leads to additional challenges such as aggravated illness and limited outdoor open space. Lighting in cells is limited and windows often lack screens and proper ventilation to protect against mosquitos. (Mahtani and O'Gorman, 2018).

Women on death row in Sierra Leone are held in Freetown Female Prison. © Boaz Riesel / AdvocAid

In both Ghana and Sierra Leone, women on death row express concern about isolation from family, especially in cases which involve violence against a family member. Mariatu[20] has spent over three years in detention in Sierra Leone for the murder of her former partner. In an interview with AdvocAid, she expresses concern

[20] Name is deliberately changed to a pseudonym. For the original interview transcript, see Appendix B.

over maintaining contact with her son: 'My son says my sister-in-law is beating him. (She) says it's because I killed her brother... Tomorrow if I get out and he asks for his dad, how will I explain that? I don't want him to grow up with hatred for me, for killing his dad.'

In Ghana, women on death row are not permitted to interact with other prisoners (Amnesty International, 2017). When staff from Amnesty International visited Nsawam Prison, they described women on death row living in isolated conditions. Women on death row are held in the 'condemned block' of the prison and have limited interaction with other women prisoners in the area (2012, p. 34). Amnesty International's interview with Vida[21] provides testimony to these death row conditions. Vida explains, 'I cannot mix with the other prisoners in the general yard [of the women's prison] and I am barred from education and workshop opportunities' (2012, p. 35).

c. Due Process Barriers

Aside from poor prison conditions, women on death row in Ghana and Sierra Leone are detained in prisons which are over-crowded and under-resourced (Amnesty International, 2017; Mahtani, 2018).

As mentioned in my Methodology, both Sierra Leone and Ghana do not have a formal federal agency which tracks female prisoners sentenced to death. The Ghana court service has only started to digitalise court submissions in 2017 with the introduction of a digital address system.[22] As a result, cases before 2017 are largely paper-based. Many inmates on death row articulate that they do not know where their files are located or report giving them to a family member for safekeeping (Amnesty

[21] Name is deliberately changed to a pseudonym.

[22] Based on email correspondence with staff at The Fair Justice Initiative. February 18, 2019.

International, 2017). Inadequate recourse to important legal documents makes it hard for these women to work with appeal lawyers. As a result, very few prisoners under sentence of death are able to appeal their convictions and sentences.[23]

High rates of illiteracy and poverty among the women on death row leave them especially vulnerable to exploitation. Female offenders who are unable to read and interpret legal documents are hindered in their ability to participate in their defence and appeals (Cornell Law School, 2018). When Amnesty International interviewed four women on death row in Ghana, none of them were able to read or write. Only one had completed primary school (Amnesty International, 2012, p. 34). Cornell Law School's 2018 (p. 8) publication points toward the socioeconomic vulnerability of many women on death row as an additional barrier:

> Women frequently lack money or property of their own, which impedes their ability to retain qualified legal counsel. Lack of economic resources also make it practically impossible for many women to compensate the victim's family in legal systems where financial restitution can lead to a reduction in their sentence.

Additionally, Thompson and Mahtani (2012, p.10) point out that Sierra Leone's court system is 'chronically underfunded and mismanaged.' For instance, the United Nations reports illiterate women mistakenly signing confessions without understanding their contents (Cornell Law School, 2018). In 2013, the UNESCO Institute for Statistics reported Sierra Leone to have a literacy rate of 24.86 per cent for females 15 years and older (UNESCO, 2019). It is likely that the illiterate are significantly over-represented in prisons.

In Ghana, reports have found that death row prisoners do not receive effective legal representation during their trials. In 2017, three-quarters of inmates were represented through the Ghana Legal Aid Scheme, although many inmates report that their lawyers did not attend all of their court proceedings (Amnesty International, 2017).

[23] Based on correspondence with staff at The Death Penalty Project. May 31, 2019.

When Amnesty International interviewed three Ghanaian women on death row in 2016, two out of the three women said that they did not have a lawyer at their trial (Amnesty International, 2017, p. 13). One woman on death row told Amnesty International, 'I don't do anything. I sweep and I wait' (Amnesty International, 2017, p. 6).

The story of MK[24] highlights the vulnerability of women sentenced to death, especially for those in poverty with poor literacy. In this instance, gender and socioeconomic status intersect to create additional barriers for women facing the mandatory death penalty. Below, former AdvocAid Executive Director Sabrina Mahtani (2018, p. 3) describes working on an appeal for MK, the longest-serving woman on death row in Sierra Leone:

> MK was arrested for killing her step-daughter in 2003, and sentenced to death in 2005. MK did not receive legal advice or assistance from the time of her arrest until before her trial in 2005. MK, who is illiterate, thumb-printed a confession which was later used during her trial. Granted a state assigned defence lawyer at the beginning of the trial, she was able to discuss her case only three times and for no more than 15 minutes each. Upon conviction, she was not informed that she had only 21 days to appeal. Furthermore, her file was not sent to the President's office for further review as required by law. MK was pregnant and had a miscarriage whilst in prison. A new lawyer hired by AdvocAid filed an appeal before the Court of Appeal in 2008, but this was rejected as it was found to be too late. In November 2010, however, the Court of Appeal agreed to hear her case again. In March 2011 the Court of Appeal agreed with the AdvocAid counsels' representing MK that the various procedural irregularities during MK's trial rendered it invalid. MK's conviction was overturned and MK was released after six years on death row.

A further issue in Sierra Leone is backlogged cases. Specifically, detainees are held in detention for long periods of time as they wait for their case to be processed through the court system (Thomas and Mahtani, 2012). In an AdvocAid 2011 briefing paper, the authors point to Sierra Leone's 21-day appeal limit as a particular challenge for women sentenced to mandatory death.[25] While Section 65 of the Courts Act 1965

[24] Name is deliberately changed to a pseudonym.

[25] Other jurisdictions have made important judicial rulings regarding this 21-day appeal limit. In *Lovelace v The Queen* (2017), the Judicial Committee of the Privy Council held that excluding death row prisoners in St. Vincent and the Grenadines from applying for an extension of time was a denial of due process and unconstitutional.

outlines the right to appeal a criminal conviction, for individuals sentenced to death, the appeal must take place within 21 days following their conviction:

> Where a person convicted desires to appeal to the Court of Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave in such manner as may be directed by Rules of Court within 21 days of the date of conviction:
>
> Provided that, except in the case of a conviction involving the sentence of death, or corporal punishment the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal or by the Court before whom the appellant was convicted.[26]

However, the challenges outlined above suggest that filing within a 21-day period may be difficult in many cases. Over a decade after their civil war, Sierra Leone's court filing procedures are still in the process of reconstruction. AdvocAid (2011, p. 2) cites additional barriers, including 'lack of knowledge of the limit, lack of funding for a competent lawyer to draft an appeal, or the fact that a person's file is lost or has been made unavailable by court personnel.' As a result, many women report spending long periods of time in detention. In 2011, the U.S. Department of State estimated that detainees spend an average of three to five years in pretrial detention. Some cases were reportedly adjourned 40 to 60 times (U.S. Department of State, 2018a, p.8). The longest-serving woman on death row in Sierra Leone, MK[27], served eight years in prison before she was eventually released.

d. Gender-Based Violence

Available data indicates that women on death row in Sierra Leone and Ghana are disproportionately affected by gender-based violence (Amnesty International 2012, 2017; Callamard, 2017; Cornell Law School, 2018; Mahtani, 2018). This can partially

[26] S65, Courts Act 1965

[27] Name is deliberately changed to a pseudonym.

be understood within the larger societal context of gender inequality and oppression. These reports of abuse, however, are overlooked in a mandatory capital punishment sentencing regime. AdvocAid (2018, p. 7) explains, 'As for serious crimes, cultural acceptance of a certain degree of domestic violence against women and lack of intervention in domestic violence situations before they become serious, contribute to the large number of cases in which women are charged with murder or other violent offences arising from self-defence situations.' Indeed, interviews with the women on death row highlight how their offenses, when looked at in closer detail, are crimes which do not meet the threshold of 'most serious crimes.' Instead, many of the women on death row are convicted for acts committed in retaliation following violence against them. In Amnesty International's (2012, p. 35) interview with Vida,[28] she describes how the eight years of abuse from her husband impacted her decision to eventually poison him:

> Vida has spent nearly twelve years in prison for murder, the majority under sentence of death. Although the first year of her marriage had been peaceful, her husband was subsequently violent. She said that after eight years of being beaten and raped by her husband every few days, she reached her breaking point and decided to poison her husband. She says she now lives with regret for her action, and since she was transferred to a prison far away from her family she has not had any visits for the last three and a half years. "My children just act like I am dead," she said.

In the case of Vida, her history of domestic abuse played a substantial role in the commission of the offense. However, data suggests that Vida's story is not an isolated incident. In Ghana, a Demographic and Health Survey (DHS) conducted in 2008, found that 38.7 per cent of married women between the ages of 15 and 49 years reported having experienced physical, psychological or sexual violence by a husband or partner during their lifetime (Institute of Development Studies, 2016, p. 22). In 2016, survey data from the Institute of Development Studies suggested that close to 28 per cent of

[28] Name is deliberately changed to a pseudonym.

female respondents had experienced domestic violence in the past 12 months (U.S. Department of State, 2018b). Yet, barriers to reporting domestic abuse include a lack of resources such as shelter facilities and trained counsellors, and some women report being returned home if their case is considered 'less severe' by police (U.S. Department of State, 2018b). For cases that do reach the courts, further difficulties include 'witness unavailability, inadequate resources and training on investigatory techniques, police prosecutor case mismanagement, and [...] lack of resources on the part of victims and their families to pursue cases' (U.S. Department of State, 2018b, p. 15).

We see similar trends in Sierra Leone. AdvocAid explains how Sierra Leone's courts often lack the training to properly account for victimisation in the sentencing process (Mahtani, 2016). Sierra Leone does have a Domestic Violence Act, but there are cultural and socio-economic challenges for women to report abuse given financial dependence on abusive partners (Mahtani, 2016). Researchers Thompson and Mahtani (2012, p. 15) explain how women 'faced with limited access to land, capital and other critical resources linked to livelihoods' frequently depend on their male family members and husbands for survival. In cases of sexual abuse, victims have described having to pay for their own treatment and medical reports (U.S. Department of State, 2018a). In a 2018 interview conducted by AdvocAid, Mariatu[29] describes her struggle to care for her child as a single parent:

> Me and my man had one child" – she starts her story, describing how her man eventually left her. As her story unfolds we understand that she was facing a similarly desperate situation to that of Isatu, whose husband had left her. As the child got sick, Mariatu struggled to make ends meet and tried to turn to her man for help. One day, desperate to find a solution, she turned up at the man's house. She recalled what she said to him at the time: "This is the child. Today I'm leaving him with you and I'm going to my house." He said she shouldn't leave the child. Shouting back at Mariatu, she recalled him shirking responsibility and saying: "If you leave him, whatever happens, happens."
>
> A fight escalated and realising that he was serious in his threats to her and her child, Mariatu said that she tried to back out. She said that he grabbed her baby and wrapped

[29] Original interview conducted by AdvocAid in 2018. See Appendix B for the original version.

> him around her body, to which her man angrily reacted: "You think that just because you picked him up, I won't beat you?" Arguments followed and as Mariatu was backing out of the room, the man pushed her. She fell down the stairs hitting her head in the gutter. She described how she was blind with rage when she picked up a bottle and smashed it on his head. "It was only later that I realised he was dead", she says as she concludes her story.

Mariatu's story highlights the persistent problem of domestic violence in Sierra Leone, especially for women in detention. In 2014, AdvocAid surveyed 80 women prisoners from eight different prisons and correctional facilities in Sierra Leone: over 60 per cent reported that they were victims of domestic violence. Nearly 25 per cent reported past sexual abuse from a partner or family member (AdvocAid, 2018). In a report by the U.S. Department of State (2018a, p. 16), researchers attributed such high levels of domestic abuse to a 'reluctance to use the judicial system by both victims and law enforcement officials, combined with women's lack of income and economic independence.' The report also describes a 'culture of silence' where victims are apprehensive to report abuse 'due to their fear of social stigma and retaliation' (p. 16).

e. 'Most Serious Crimes'

The sections above have outlined prison conditions and due process barriers for women held on death row, as well as an overview of gender-based violence in both countries. Although female prisoners account for a smaller percentage of the death row prison population, the 'death row prisoner experience' has become an overwhelmingly male narrative. Leonard (1982) argues that many theories claimed to describe general 'human behaviour' are centred around the male experience. She adds, 'We cannot simply apply these theories to women, nor can we modify them with a brief addition or subtraction here and there' (p. 181). Cornell Law School's 2018 publication explains how criminal justice processes that ignore gender-based violence may 'actively reinforce gender-based discrimination (Cornell Law School, 2018, p. 3). Indeed, interviews with the women on death row suggest that many have been charged with

murder committed in retaliation following violence against them. This section applies a gendered perspective to women sentenced to mandatory death and international human rights law.

While Sierra Leone and Ghana retain the mandatory death penalty for murder, they still have state obligations outlined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Ghana and Sierra Leone[30] are parties to the ICCPR, which restricts the use of the death penalty to the most serious crimes.[31] The ICCPR, adopted by the UN General Assembly in 1966, states in Article 6(2): 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes.' The concept of the *most serious crimes* has been interpreted to include only those crimes that are intentional with lethal or extremely grave consequences (Penal Reform International, 2015). The UNHRC have repeatedly held that in all cases involving the application of the death penalty the personal circumstances of the offender and the particular circumstances of the offence must be considered by the sentencing court.

However, I argue that in countries where capital punishment is the mandatory punishment for murder, women's prior experiences of abuse are overlooked. To impose a death sentence automatically without regard to these circumstances of the offence or offender would be arbitrary in violation of Article 6(1) and would not meet the threshold of the *most serious crimes* under article 6(2).[32] For women charged with

[30] Ghana acceded in 2000 and Sierra Leone acceded in 1996.

[31] Both countries have not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which requires a state party not to carry out executions and to 'take all necessary measures to abolish the death penalty within its jurisdiction.'

[32] General Comment on Article 6 of the ICCPR, General Comment No. 36 (2018) and *Johnson v Ghana*, Comm. No. 2177/2012

murder when defending themselves, the mandatory death penalty makes no distinction between potential degrees of seriousness.

Several important judicial rulings highlight how mandatory capital punishment violates the right to life, the prohibition on inhuman and degrading treatment or punishment, as well as ICCPR's restriction of the death penalty to the 'most serious crimes.' If we consider the 1976 case of *Woodson* v. *North Carolina*, Justice Stewart explicitly opposed mandatory opposition for 'it treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless undifferentiated mass to be subjected to the blind infliction of the penalty of death'.[33] Several decades later, the United Nations High Commissioner for Human Rights (2014) reaffirmed that 'the mandatory use of the death penalty is not compatible with the limitation of capital punishment to the "the most serious crimes".'[34]

The imposition of mandatory death makes it impossible for the judge to consider relevant facts which distinguish the seriousness of crimes from one another (Novak, 2016). This prevents courts from considering whether or not the imposition of death is a proportionate punishment – a crucial element in determining the 'most serious crimes.' Executive Director of the Centre on the Death Penalty Worldwide Delphine Lourtau argues that since a large number of women in the criminal justice system have suffered from abuse and trauma, these factors need to be recognized and should 'preclude death sentences in cases where women have suffered-gender-based violence' (United Nations Human Rights, 2018, p. 4).

Without judicial discretion, Novak (2016) points out that the capital sentencing process becomes simplified. In jurisdictions with limited legal resources, and with

[33] *Woodson v North Carolina* 428 US 280 [1976]

[34] A/HRC/27/23, paras 40–42

backlogged cases (Mahtani, 2018) or an over over-worked defence counsel (Amnesty International, 2017), a mandatory death sentence might appear to be an especially attractive option because it restricts the need for a resource-intensive legal proceeding (Novak, 2016). However, Kadri (2016) criticizes the mandatory death penalty for its weakening of judicial discretion. Mandatory death sentences further weaken power relationships between branches of government, Kadri argues, as it limits opportunity for the victim and defendant to be heard.

Now, critics of my argument could point out that Ghana and Sierra Leone still have Constitutional provisions which guarantee a defendant's right to seek pardon or commutation. On this topic, Middleton and Clift-Matthews (2018) explain how the right to seek pardon or commutation (also enshrined in Article 6(4) of the ICCPR) is not an adequate substitute for the need for judicial discretion. In the application of the death penalty, these rights are 'applicable *in addition* to the particular right to seek pardon or commutation of the sentence'.[35] As a cross-jurisdictional example, consider the seminal judgment in *Reyes,* where the Privy Council ruled the mandatory death penalty to be unconstitutional. Lord Bingham explains:

> [T]o deny the offender the opportunity, before sentence has been passed, to seek to persuade the court that in all the circumstances to condemn him to death would be disproportionate and inappropriate is to treat him as no human being should be treated and thus to deny his basic humanity.[36]

If mitigating facts are only presented in post-sentencing clemency hearings, this undermines the idea that clemency is for those who are factually guilty of the offence but deserve compassion for humanitarian reasons (Hood and Hoyle, 2015). A defendant's right to seek pardon or commutation should not be used as a substitute for fair sentencing practices. To ensure a proportionate sentence, women who have a

[35] Para. 7 of General Comment No. 6

[36] *Reyes v R* [2002] 2 AC 235, para. 43.

defence to murder should be able to present mitigating facts *prior* to sentencing. Instead, the mandatory death penalty prevents courts from considering the full circumstances of the crime.

V. Imagining Alternatives to Mandatory Capital Punishment

a. Discretionary Capital Sentencing

The testimonies of women on death row in Sierra Leone and Ghana suggest that many have been charged with murder after periods of prolonged abuse. However, in countries where the death penalty is mandatory, the automatic imposition of death prevents courts from considering mitigating factors of domestic abuse during capital sentencing. Ignoring essential facts of domestic violence violates Article 6(2) of the ICCPR, where 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes'[37] and is also arbitrary. This section examines alternatives to mandatory capital punishment, such as a discretionary capital sentencing system.

A discretionary capital sentencing system provides some safeguards for individuals facing capital punishment. In their 2018 report, *Sentencing in Capital Cases,* Middleton and Clift- Matthews outline three broad approaches to discretionary capital sentencing. Of these three approaches, the 'rarest of the rare' approach is the most common test applied by the courts. Middleton and Clift-Matthews (2018, p. 5) explain:

> The underlying principle is that there is a strong presumption in favour of life, and the death penalty must be reserved for the most exceptionally severe cases of the offence in question. But this is not the only approach. In some countries the position is more neutral, and there is no particular presumption either way: aggravating and mitigating circumstances are considered together. And in others there is, in principle at least, a presumption in favour of death, which is only avoided where the offender can establish extenuating circumstances.

Today, most countries have adopted the 'rarest of the rare' approach, where sentencing in discretionary capital cases requires the judge to carefully consider relevant factors of the case. To do this, judges must identify and balance aggravating factors of

[37] See CCPR/C/LBN/CO/3, para. 22; CCPR/C/48/D/470/1991; and A/67/275, para. 66

the offense with mitigating factors related to the circumstances of the defendant (Middleton and Clift-Matthews, 2018).

b. Case Studies

To demonstrate how a more discretionary capital sentencing system might work in practice, we can consider the United States and the Caribbean as case studies. Both jurisdictions provide some consideration for domestic abuse as a mitigating factor during capital sentencing.

i. The United States

The United States federal system allows each state jurisdiction to define individual laws related to self-defence. Since *Roberts* v. *Louisiana* [38] and *Woodson* v. *North Carolina,*[39] mandatory death sentences have been unconstitutional in the United States. In *Woodson* v. *North Carolina* (1976, p. 292), the ruling observed that 'the practice of sentencing to death all persons convicted of a particular offence has been rejected as unduly harsh and unworkably rigid.' Instead, discretionary sentencing provides judges with the opportunity to assign sentences which are more proportionate to the alleged offense.

Since the death penalty was reinstated by the 1976 Supreme Court case *Gregg* v. *Georgia,*[40] 16 women have been executed within the United States. Nine of these 16 cases involved the murder of an intimate partner (Cornell Law School, 2018). Within United States jurisdictions, Battered Woman Syndrome is commonly used to explain a battered woman's alleged criminal conduct after experiencing prolonged physical,

[38] *Roberts v Louisiana* 428 US 325 [1976]

[39] *Woodson v North Carolina* 428 US 280 [1976]

[40] *Gregg v Georgia* 428 U.S. 153 [1976]

sexual, and psychological abuse (Walker,1979). The theory of 'battered woman's syndrome' (BWS) was first referenced in Lenore Walker's 1979 book, *The Battered Woman Syndrome*. BWS is not a formal medical diagnosis, but rather, a subtype of Post-Traumatic Stress Disorder.[41] While BWS can be experienced by individuals of all genders, the term, 'woman' is used given that statistically, women are victims of domestic violence more often than men (Truman and Morgan, 2014). The following definition of BWS is provided by Walker (2007, p. 42):

> BWS, as it was originally conceived, consisted of the pattern of the signs and symptoms that have been found to occur after a woman has been physically, sexually, and/or psychologically abused in an intimate relationship, when the partner (usually, but not always a man) exerted power and control over the woman to coerce her into doing whatever he wanted, without regard for her rights or feelings.

In 1979, *Ibn-Tamas* v. *United States*[42] served as the landmark case for a general acceptance of BWS expert evidence in self-defence claims. In this case, Beverly Ibn-Tamas was charged with the second-degree murder of her husband after years of prolonged abuse. While BWS is not a formal legal defence, it falls under the category of diminished responsibility. Walker (2012, p. 321) elaborates:

> Often called the battered woman self-defence, the defence has been introduced by attorneys on behalf of their clients to demonstrate to the judge and jury that living in domestic violence has such a major impact on a woman's state of mind that it could make an act of homicide justifiable, even when the first look at the facts does not appear to be traditional confrontation self-defence, such as when the man is resting, sleeping, or otherwise not directly engaged in beating her at the moment of the homicide incident.

There are several criticisms of BWS. In jurisdictions where self-defence is predicated on legal standards of 'reasonable,' 'necessary,' and 'imminent threat,' this does not align with theories of BWS (Mahtani, 2016). A woman who kills her batterer while he is asleep or intoxicated, for instance, might have difficulty meeting the legal criteria of self-defence.

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[41] Diagnostic and Statistical Manual (DSM) IV 309.81 APA 1994.

[42] *Ibn-Tamas v United States*, 407 A.2d 626 [D.C. 1979]

Some victims express guilt over the belief that they 'allow' themselves to be abused and often feel responsible for the violence (Walker, 2012). This theory of 'Learned Helplessness' is a central feature of BWS, where 'even though [the victim] may objectively appear free to leave the relationship, subjectively victims tend to perceive themselves as trapped within the relationship, a situation akin to a state of psychological captivity' (*Lavern Longsworth* v. *The Queen*, 2012, p. 14). As a result, Dr. Mezey, who provided expert testimony in the 2012 Caribbean landmark case *Lavern Longsworth* v. *The Queen* (p. 14), explains:

> Victims of domestic violence avoid talking about the violence to outsiders, or may lie about the cause of their injuries, or simply stay silent. Because of learned helplessness and traumatic bonding, as well as the fear of repercussions, they rarely report the violence to the police or, if they do, commonly retract allegations and refuse to proceed with criminal prosecution.

Other critics of Walker's theory assert that the reasons why women remain in abusive relationships are far too complex to conflate into a single theory (Wing, 2003). Walker (2007) explains how identifying the symptoms as a syndrome will 'infantilize and pathologize battered women' (p. 349). Wing (2003) argues that BWS perpetuates harmful gender stereotypes. If the woman who kills her abuser does not fall under a traditional BWS profile, the woman faces conviction despite reasonable claims of self-defence. A further concern is racial biases, where historical stereotypes of women of colour contradict the profile of a stereotypical battered woman. On this issue, Wing (2003, p. 262) explains,

> The "essentialist" battered woman profile is a white, middle class, passive, weak woman who, in a moment of terror, lost control and committed a crime because she was being abused. If there is an acceptable battered woman type whose circumstance is more defendable than others, how does this attitude affect the trials of other battered women who may arguably be in the same position as the classic battered woman but who do not mirror the same physical or sociological characteristics?

Russell and Melillo (2006) point out that with essentialism, the creation of a 'universal' battered woman fails to recognise differences among women based on

factors such as socio-economic status, race, sexual orientation, and gender. There is also the concern that the word 'syndrome' conveys a uniform response to battering (Ferraro, 2003), or will be viewed as an excuse rather than a mitigating factor of self-defence (Russell and Melillo, 2006). Finally, it is important to recognise that even with the adoption of discretionary sentencing, courts often disregard the significance of gender-based violence (Callamard, 2017).

ii. The Caribbean

While BWS is subject to several associated criticisms (Ferraro, 2003; Wing, 2003; Russell and Melillo, 2006), the cases of Lavern Longsworth[43] and Veola Pook[44] highlight how expert testimony on the impact of abuse on women charged with criminal acts has helped to achieve justice in the courts.

The case of Lavern Longsworth serves as the first time that Belize recognised BWS as part of a defence to murder (The Death Penalty Project, 2017). In July 2010, Lavern Longsworth threw kerosene and a lit candle on her partner, David White, at their home in Belize City. Longsworth felt threatened by White after she observed a knife in his waistband and knew that he had been using drugs. Two weeks later, White died in a hospital from his burns. Longsworth was originally convicted for murder and sentenced to life imprisonment before the Belize City Supreme Court.

In her original trial, Longsworth did not receive a mental health assessment. However, an appeal was later launched based on Section 20 of the Court of Appeal Act on 'fresh evidence.' Dr. Gillian Mezey, a British based consultant forensic psychiatrist examined Longsworth at the request of appellant counsel. Her findings confirm that at

[43] *Lavern Longsworth v The Queen* [2012]

[44] *Veola Pook v The Queen* [2013]

the time of the offense, Longsworth had a history and behaviour consistent with BWS. In her opinion, Dr. Mezey describes Longsworth's history of childhood and adult abuse:

> ... she was physically and psychologically abused by her father; she was raped by an adult male at the age of 15 and she subsequently had a series of relationships with men, which were unstable and frequently abusive. She was subjected to domestic abuse by her partner, David White, throughout their 9-year relationship, consisting of physical, sexual, financial, and psychological abuse. She was physically abused through being beaten on a regular basis and choked to the point of loss of consciousness. Over the years she had sustained extensive bruising and injuries, as a result of his violence. She was verbally abused and threatened, including threats to kill; her possessions and those of her children were stolen or destroyed; her money was stolen and members of her family being robbed and abused by David White, on a regular basis. She also suffered years of psychological abuse, through David White's drug taking, his constant demands for money and his affairs with other women (Lavern Longsworth v. The Queen, 2012, p. 12).

At the time of the killing, Longsworth's emotional and behavioural responses were affected by recurring abuse, resulting in diminished responsibility. Dr. Mezey explains that symptoms of BWS likely influenced Ms. Longsworth's emotions and behaviour at the time of the offense, 'particularly those relating to the increasing distress and physiological reactivity that would have been triggered by again being in a situation that resembled previous occasions when she had been hurt and abused by David White' (*Lavern Longsworth v The Queen*, 2012, p. 12). The Court of Appeal in Belize returned a judgment of guilty of manslaughter, on the grounds of diminished responsibility, resulting in Longsworth's life sentence being reduced to eight years imprisonment (The Death Penalty Project, 2017).

Today, Longsworth's case has established a precedent for other women in comparable situations. For instance, it guided the subsequent case of *Veola Pook v The Queen*. On the evening of December 31, 2008, Veola Pook threw gasoline on her husband, Orlando Vasquez in their home in the Rancho Dolores Village, Belize District. Vasquez died from his burns two days later in the hospital. Pook was originally convicted of murder in 2011 and sentenced to life imprisonment. The prosecution did not seek the death penalty. In March 2014, the Court of Appeal in Belize ordered a

retrial. In a psychiatric evaluation, United Kingdom forensic psychiatrist Dr. Richard Latham concluded that Pook suffered from BWS at the time of the murder (The Death Penalty Project, 2015). As a result, Pook pleaded guilty to manslaughter after the Director of Public Prosecutions considered a psychiatric evaluation of her mental state at the time of the killing.

In the cases of Longsworth and Pook, medical evidence presented at trial verified that the women were suffering from BWS at the time of the murders. The expert testimony of trained, reputable mental health professionals provided evidence to establish a defence of diminished responsibility. While these cases are from Belize in Central America, the jurisprudence has the potential to influence other retentionist countries.

However, it is also important to recognise that these case victories were not achieved without significant challenges. In the case of Lavern Longsworth, evidence of BWS was not initially introduced because the sole psychiatrist was unavailable. There were no qualified forensic psychiatrists available in Belize at the time of the trial (*Lavern Longsworth v The Queen*, 2012, p. 15). The section below will discuss potential challenges for the implementation of a discretionary capital sentencing system in countries with limited medical facilities and mental health services.

c. Implementation Challenges

Given the case studies above, the question remains as to how Ghana and Sierra Leone might respond should they abolish the mandatory death penalty and move toward a discretionary system. Case studies from the United States and Caribbean highlight how other jurisdictions provide some consideration for domestic abuse as a mitigating factor during capital sentencing. However, this is normally established under the

defence of diminished responsibility, which is not available in Ghana or Sierra Leone. Instead, a defence must be formulated under previously existing legal provisions, such as self-defence (Mahtani, 2016). Many women on death row face challenges in persuading a court that their actions fall within the limits of 'self-defence' (Lourtau and Pia Hicket, 2018). Mahtani (2016, p. 2) points out that self-defence 'requires the act to be in response to an imminent threat, thus excluding many cases where women fatally attack their abuser.' Likewise, Cornell Law School's (2018, p. 11) report explains how a woman experiencing prolonged abuse may perceive threats of violence as 'ever-present.' Women in prolonged abusive relationships do not always respond immediately to abuse, as an instant response may create a more dangerous situation for the victim (Linklaters, 2016).

The United Kingdom case of Kiranjit Ahluwalia[45] demonstrates how the legal standards surrounding self-defence do not always align with the realities of women facing long-term domestic abuse. Ahluwalia was originally convicted of murder after pouring a can of petrol on her husband's feet and setting him on fire. However, in a 2007 article published in *The Guardian,* Julie Bindel describes the abuse Ahluwalia endured during her ten years of marriage:

> Ahluwalia arrived in Britain in 1979 from India, aged 24, following an arranged marriage. She spoke little English when she moved in with her husband Deepak's family in London, where Deepak immediately began to abuse her. "I did not want to say anything and spoil my family's excitement," she says, "and I hoped it would not continue ... He would push me about, yank my hair, hit me and drop heavy pans on my feet. I was treated like a slave. He would not allow me to drink black coffee or eat chilies, for the simple reason that I enjoyed them. But I was so frightened of him that I didn't say anything. I often lay awake at night next to him because I was too frightened to sleep." Deepak also raped her frequently, telling her that this was his right.

When Ahluwalia's murder conviction was eventually overturned in 1992, this ruling served as the United Kingdom's landmark case for a general acceptance of a

[45] *R v Ahluwalia* [1992] 4 All ER 889

'slow burn reaction' in domestic violence cases. While this defence is currently not available in Ghana and Sierra Leone, one option would be to expand the standards surrounding self-defence to include BWS and a 'slow burn reaction.'

If Ghana and Sierra Leone did move toward a discretionary capital punishment system, a further option would be for the sentencing courts to consider evidence of domestic abuse as a mitigating factor. However, this then raises the question of whether each country has the resources to provide expert medical evidence to substantiate claims of domestic violence. Testimony on a defendant's abusive background requires access to forensic mental health services and the expertise of psychiatrists familiar with the effects of battering (Walker, 2012; Eastman et al., 2018). Other considerations, such as a battered woman's perception of danger, can be introduced and validated by expert testimony. In The Death Penalty Project's 2018 *Handbook of Forensic Psychiatric Practice in Capital Cases,* the authors explain how these legal principles require trained mental health and legal professionals. In particular, mental health professionals must be 'equipped with medical expertise, in terms of making a diagnosis, as well as clinical-legal expertise in terms of presenting evidence to courts' (Eastman et al., 2018, p. vi).

A further concern is the limited number of trained mental health professionals available in each country. Data on mental health suggest that Sierra Leone has one active psychiatrist for the entire population of 7.5 million people, while one retired psychiatrist, Dr. Nahim, picks up occasional private work (MacDougall, 2012).[46] Ghana presents similar challenges regarding access to mental health services and gender-specific services. In 2017, it was estimated that Ghana has 14 psychiatrists for over 28.83 million people.[47]

[46] Confirmed in email correspondence with staff at AdvocAid. April 1, 2019.

[47] This estimate is based on a conversation with staff at The Death Penalty Project and The Fair Justice Initiative. April 1, 2019.

Country	Population	Psychiatrists
Sierra Leone	7.5 million	1
Ghana	28.83 million	14

Table 2: Mental Health Resources available in Ghana and Sierra Leone.

Access to mental health services and gender-specific services is especially limited inside prison detention facilities. In Sierra Leone, female inmates requiring additional care are referred to local hospital, although 'doctors and nurses in these hospitals often refused to treat them or provided inferior care because of the government's failure to pay medical bills' (U.S. Department of State, 2018a, p. 3). According to AdvocAid (2018), some women are detained in a state-run psychiatric hospital with outdated facilities and poor living conditions. Medical supplies and other female-specific healthcare items, such as sanitary products, are under-resourced (Mahtani and O'Gorman, 2018). In Ghana, Amnesty International's (2017, p. 19) report documents a lack of adequate prison staff available to respond to prisoners with mental health and intellectual disabilities.

The information provided above leaves us with serious concerns about Ghana and Sierra Leone's ability to support a discretionary capital punishment system. If courts do not have the medical resources to take domestic violence and victimisation into account, we are left with a system that continues to overlook the effects of gender-based violence. As I have argued throughout this paper, ignoring essential facts of domestic violence violates Articles 6(1) and 6(2) of the ICCPR, where 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes' and cannot amount to an arbitrary deprivation of the right to life.[48] Without the resources in place to adequately support a discretionary capital

[48] See CCPR/C/LBN/CO/3, para. 22; CCPR/C/48/D/470/1991; and A/67/275, para. 66

sentencing system, the most effective way for Ghana and Sierra Leone to protect human rights standards is to consider complete abolition of the death penalty altogether. I do not want to discount the possibility that in theory, both countries could invest additional resources to ensure that due process safeguards are being met. At present, however, Ghana and Sierra Leone do not have adequate provisions in place to consider domestic violence and victimisation during sentencing. This has implications for the human rights of women on death row *and* the individual women serving a prison sentence in these countries.[49] Without the resources to substantiate claims of domestic violence and abuse, how can we ensure that *any* of the prison sentences assigned in these countries are proportionate and just?

[49] According to an email correspondence with staff at AdvocAid, they are presently providing legal representation and support to 22 women on trial for murder in Sierra Leone. Of these cases, 13 are being heard in Freetown, 5 in Makeni, 3 in Kenema and 1 in Port Loko. May 14, 2019.

VI. Concluding Thoughts

This paper has applied a gendered perspective to women sentenced to mandatory death in Ghana and Sierra Leone, West Africa. As mentioned above, there are six women on death row in Ghana and two women on death row in Sierra Leone, all sentenced to mandatory death for murder. However, interviews with the women on death row highlight how their offenses, when looked at in closer detail, are crimes which do not meet the threshold of 'most serious crimes.' Instead, many of the women on death row are convicted for acts committed in retaliation following violence against them. In this paper, I have argued that ignoring essential facts of domestic violence violates Article 6(2) of the ICCPR, where 'in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes.' It is also arbitrary in violation of Article 6(1). Awareness of the human rights abuses associated with mandatory capital punishment makes it easier to challenge its legitimacy both in law and in practice. I have also considered the practicalities of abolishing the mandatory death penalty and moving toward a more discretionary sentencing regime. However, a survey of mental health resources available in both countries suggests that Ghana and Sierra Leone do not have the mental health resources to support a discretionary capital punishment system in practice. As such, I have argued that the most effective way to protect human rights standards is for Ghana and Sierra Leone to abolish the death penalty altogether.

a. Future Research

Throughout this paper, I have focused on the eight women sentenced to mandatory death in Ghana and Sierra Leone, West Africa. Below I outline several areas of study that were beyond the scope of this paper and demand further research.

First, while this paper has selected Sierra Leone and Ghana for its geographic region of focus, many other countries in West Africa – and in other parts of the world – require similar study. Within West Africa, a country that deserves particular research attention is Nigeria. Unlike Ghana and Sierra Leone, Nigeria is a retentionist country, with 2,285 people on death row at the end of 2017 (Amnesty International, 2018). There are an estimated 32 women on death row (Mahtani, 2018).

Under secular law of Nigeria's Southern states, murder is punishable by death (Amnesty International, 2008). However, organizations such as Amnesty International reference Nigeria imposing capital punishment on people who are below the age of 18 and violating international fair trial standards (Amnesty International, 2016). Similar to Sierra Leone and Ghana, Nigeria has limited mental health resources. In 2015, it was reported that Nigeria has 130 psychiatrists for 190 million people (Al Jazeera, 2015).

Nigeria was beyond the scope of this paper for several reasons. First, Nigeria does not have a formal legal database system to digitally access case information. Criminal laws also vary from state to state across Nigeria, thirty-six states in total. In order to determine the individual charges of the women on death row, this would require time-intensive, costly in-person prison visits.[50] During my correspondence with the Legal Defence and Assistance Project (LEDAP), they requested funding to do this work, but it was not available for this paper.

Second, my paper presents data which suggests that women on death row in Sierra Leone and Ghana are held in detention facilities that are overcrowded, isolated, and which provide inadequate female-specific healthcare. While much of this data was gathered from previous reports, there is a need for further, up-to-date information. The most comprehensive report on Nsawam Prison, Ghana was conducted nearly two years

[50] Information based on a Skype call with staff at Legal Defence and Assistance Project (LDAP).

ago in 2017 by Amnesty International. Information on Freetown Female Prison, Sierra Leone was gathered from a series of individual articles published by AdvocAid. Future research might also consider whether present-day prison conditions observe the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Finally, there is work to be done beyond academic research. Ferraro (2003, p. 127) explains how academic and advocacy work must 'occur in tandem with efforts to transform the social, cultural, and economic processes that support the rampant violence against women.' To date, many advocacy organizations have called for all mandatory death sentences to be commuted to terms of imprisonment (Amnesty International, 2012). However, additional research should examine whether life imprisonment raises similar human rights concerns to the mandatory death penalty. Discretionary sentencing is not an absolute protection against arbitrary application of the death penalty, as gendered-based discrimination within the criminal justice system still remains at large.

For the purposes of this paper, gender is understood to produce distinct vulnerabilities for women sentenced to mandatory death. While this paper has prioritised gender, I recognise that women on death row experience multiple and intersecting forms of oppression (Crenshaw, 1989, 1991). Gender is only one lens of analysis, and further research should explore the 'multidimensionality' (Crenshaw, 1989, p. 139) of additional identities. On this topic, Hulko (2009) points out that many intersectional studies focus their discussion on identities of gender, class, and race (Davis, 1994). Other identities, such as religion, age, ability, citizenship and sexual orientation, need to be prioritised in death penalty scholarship, as they are beginning to be in other areas of criminal justice.

VII. References

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VIII. Appendices

Appendix A

http://advocaidsl.org/voices-from-inside/

Aminata

"*So, I said: love is not by force*"

Market Trader | Murder

Aminata was found guilty of killing her abusive ex-boyfriend and received the death penalty, the mandatory sentence for murder. At the time of the interview, she was awaiting her judgment from the Court of Appeal. As she sits down on the bench opposite us, she narrates her story hurriedly, the sentences pouring out one after the other.

"*Me and him were together, but our lifestyles didn't fit. So, I decided to tell him I don't want him anymore. So anywhere he'd see me, he'd target me, because he said a woman shouldn't tell a man she doesn't want him*", she starts.

Aminata decided to avoid her ex-boyfriend, steering clear of the places they may cross paths. But living in the same compound did not make it easy and he was persistent.

Anytime they stumbled across each other, he would go at her, cursing her for having left him. "*Love is not by force, love is not by force*" – Aminata would tell him. To no avail. One morning, he showed up at her doorstep, looking for a confrontation with Aminata. *"Come out to the street, come out to the street now and tell me you don't want me!* "– he shouted. Aminata went down to meet him. Seeing the man's aggressive demeanour, she tried to retreat into her room. He followed her and started beating her with a rubber pipe. She fell, and as she did, her hand reached for something – anything – to defend herself with. She struck him with what she had grabbed and ran. It was a knife. It was only upon arrest that she was told her abuser had died. At her trial, Aminata was sentenced to death.

On 27th of April 2011, Aminata's death sentence was commuted to life imprisonment by Presidential Pardon to mark Sierra Leone's 50th Independence Day. Prior to this, in 2010, AdvocAid had filed an appeal on her behalf. Her appeal hearing closed for judgment in February 2015. Then in January 2019, after almost four years waiting, Aminata's conviction and sentence was quashed and a verdict of not guilty was found.

When asked what message she would like to reach the public, Aminata said:
"When someone offends you, avoid them. If they continue, go to the police, so that the court and the police can deal with it, and you can be free of it. Go to the police: they will deal with it. (…) At that time, I didn't have any idea. I didn't even know what a case was."

Appendix B

http://advocaidsl.org/voices-from-inside/

Mariatu

"If one day, he will come and ask me: where is my dad? How will I explain?"

Petty Trader | Murder

For Mariatu, it's her third year in detention. Flower in her hair, she starts taking it out as she settles down for the interview, then puts it back with a laugh when we tell her she can keep it.

"*Me and my man had one child"* – she starts her story, describing how her man eventually left her. As her story unfolds we understand that she was facing a similarly desperate situation to that of Isatu, whose husband had left her. As the child got sick, Mariatu struggled to make ends meet and tried to turn to her man for help. One day, desperate to find a solution, she turned up at the man's house. She recalled what she said to him at the time: "*This is the child. Today I'm leaving him with you and I'm going to my house."* He said she shouldn't leave the child. Shouting back at Mariatu, she recalled him shirking responsibility and saying: *"If you leave him, whatever happens, happens.*"

A fight escalated and realising that he was serious in his threats to her and her child, Mariatu said that she tried to back out. She said that he grabbed her baby and wrapped him around her body, to which her man angrily reacted: "*You think that just because you picked him up, I won't beat you?"* Arguments followed and as Mariatu was backing out of the room, the man pushed her. She fell down the stairs hitting her head in the gutter. She described how she was blind with rage when she picked up a bottle and smashed it on his head.

"*It was only later that I realised he was dead*", she says as she concludes her story.

Now that she's inside, Mariatu is worried. "*My son says my sister-in-law is beating him. (She) says it's because I killed her brother. (…) Tomorrow if I get out and he asks for his dad, how will I explain that? I don't want him to grow up with hatred for me, for killing his dad.*

Appendix C

https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

International Covenant on Civil and Political Rights, Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.