



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

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When Aminata 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.ⁱ

I. The Mandatory Death Penalty

Aminata’s story is not an isolated incident. To date, 106 countries have abolished the death penalty for all crimes.ⁱⁱ However, 29 countries retain the mandatory death penalty.ⁱⁱⁱ

In systems retaining the mandatory death penalty, everybody who is convicted of a particular offense is given the same sentence of death. 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.

II. Domestic Violence

The mandatory death penalty’s application to domestic-abuse related crimes is especially

concerning. As women on death row represent only five per cent of the world’s total death row population, their experiences remain largely understudied.^{iv}

Of the estimated 500 women on death row worldwide, we know that many – and the female prison population in general – come from abusive backgrounds.^v 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’.^{vi}

Despite this knowledge, the administration of the mandatory death penalty typically overlooks essential facts of a capital defendant’s case when women are charged with murder in the context of self-defence.

III. Ghana and Sierra Leone

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

Available data estimates a total death row population of 160 individuals in Ghana^{vii} and 50 individuals in Sierra Leone.^{viii} Of these, there are six women on death row in Ghana and two in Sierra Leone. All eight women are sentenced to mandatory death for murder.

Interviews with the women on death row in Ghana^{ix} and Sierra Leone^x 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.

Ghana and Sierra Leone are 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.^{xi} Hanging is the method of execution.^{xii}

Women sentenced to death are held in the female wing of Nsawam Central Prison in Ghana^{xiii} and the Freetown Female Correctional Centre in Sierra Leone.^{xiv} Both facilities are blighted by overcrowding, isolation, and inadequate female-specific healthcare.^{xv} While very few women are executed, many have spent years detained on death row in especially grim conditions.

In their factsheet on prison conditions for women facing the death penalty, Penal Reform International 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’.^{xvi}

IV. International Covenant on Civil and Political Rights

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).

The imposition of mandatory death makes it impossible for the judge to consider relevant facts which distinguish the seriousness of crimes from one another.

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.

V. Alternatives to Mandatory Capital Punishment

Given the information above, the question remains as to how Ghana and Sierra Leone might respond should they abolish the mandatory death penalty and move to a discretionary system.

a. Existing Legal Provisions

Case studies from the United States and the Caribbean highlight how other jurisdictions provide some consideration for domestic abuse as a mitigating factor during capital sentencing.^{xvii} 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.^{xviii}

Yet, many women on death row face challenges in persuading a court that their actions fall within the limits of self-defence.^{xix} Former AdvocAid Executive Director Sabrina Mahtani 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’.^{xx} Likewise, Cornell Law School’s 2018 report explains how a woman experiencing prolonged abuse may perceive

threats of violence as ‘ever-present’.^{xxi} 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.^{xxii}

For women charged with murder when defending themselves, the mandatory death penalty makes no distinction between potential degrees of seriousness. Of course, this does not mean that criminal justice responses will inevitably be fair under a discretionary system. 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.

b. Mental Health Resources

If Ghana and Sierra Leone did move toward a discretionary capital punishment system, a further question is 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.

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

However, 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.^{xxiii}

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.^{xxiv} These data suggest that Ghana and Sierra Leone do not have the mental health resources to support a discretionary capital punishment system.

If courts do not have the medical resources to take domestic violence and other mitigating factors into account, we are left with a system that continues to overlook the effects of gender-based violence.^{xxv}

VI. Key Recommendations

- 1) Without the resources in place to adequately support a discretionary capital sentencing system, the most effective way for Ghana and Sierra Leone to protect the human rights of those charged with serious offences is to abolish the death penalty altogether.
- 2) Even without the death penalty, domestic violence should be given greater weight as a mitigating factor when establishing culpability. To do this, Ghana and Sierra Leone need to expand the legal standards of self-defence to recognize the experiences of women who have experienced prolonged domestic abuse.
- 3) Ghana and Sierra Leone need adequate medical resources to consider domestic violence and other mitigating factors during sentencing. This has implications for the human rights of all women charged with violent crimes in these countries.

VII. Endnotes

ⁱ Original interview conducted by AdvocAid in 2018. 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 was found not guilty and released in January of 2019. Full interview available from: <http://advocaidsl.org/voices-from-inside/> [Accessed 14 July 2019].

ⁱⁱ Amnesty International, 2018. *Abolitionist and retentionist countries as of July 2018*. Amnesty International Publications. Available from: <https://www.amnesty.org/en/documents/act50/6665/2017/en/> [Accessed 5 June 2019].

ⁱⁱⁱ The Death Penalty Project., 2018. *Moving away from the mandatory death penalty*: London. Available from: www.deathpenaltyproject.org/2018/10/10/moving-away-from-the-mandatory-death-penalty/ [Accessed 5 June 2019].

^{iv} Cornell Law School, September 2018. *Judged for more than her crime: A global overview of women facing the death penalty*. Available from: <https://www.deathpenaltyworldwide.org/pdf/judged-for-more-than-her-crime.pdf> [Accessed 5 June 2019].

^v Mahtani, S., 2018, October 10, 2018. *The invisibles: Women on death row in Africa*. Africa Portal. pp. 1-9. Available from: <https://www.africaportal.org/features/invisibles-women-death-row-africa/>

^{vi} Lourtau, D. and Pia Hickey, S., 2018. *Judged for more than her crime: A global study of women facing the death penalty*. Penal Reform International. London. pp. 4. Available from: <https://www.penalreform.org/resource/women-who-kill-in-response-to-domestic-violence/> [Accessed 5 June 2019].

^{vii} Cornell Centre on the Death Penalty Worldwide, Ghana, 2017. Available from: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Ghana> [Accessed 12 July 2019].

^{viii} Cornell Centre on the Death Penalty Worldwide, Sierra Leone, 2019. Available from:

<https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Sierra+Leone> [Accessed 12 July 2019].

^{ix} Amnesty International, 2017. *Locked up and forgotten: The need to abolish the death penalty in Ghana*. Amnesty International Publications. Available from: <https://www.amnesty.org/download/Documents/ACT5062682017ENGLISH.PDF> [Accessed 5 June 2019].

^x AdvocAid, 2018. *Voices from Inside*. pp. 1-11. Available from: <http://advocaidsl.org/voices-from-inside/> [Accessed 5 June 2019]

^{xi} Hood, R. and Hoyle, C., 2015. *The death penalty: A worldwide perspective*. Fifth Edition. Oxford: Oxford University Press.

^{xii} According to staff at Legal Resources Centre (LRC), Ghana and AdvocAid, Sierra Leone. May 6, 2019.

^{xiii} Amnesty International, 2017. *Locked up and forgotten: The need to abolish the death penalty in Ghana*. Amnesty International Publications. Available from: <https://www.amnesty.org/download/Documents/ACT5062682017ENGLISH.PDF> [Accessed 5 June 2019].

^{xiv} Mahtani, S. and O’Gorman, M., 2018. *Inside Sierra Leone’s maximum-security prison for women*. Al Jazeera. Available from: <https://www.aljazeera.com/indepth/inpictures/sierra-leone-maximum-security-prison-women-180320123948503.html> [Accessed 5 June 2019].

^{xv} See Amnesty International, 2017. *Locked up and forgotten: The need to abolish the death penalty in Ghana*. Amnesty International Publications; and Mahtani, S. and O’Gorman, M., 2018. *Inside Sierra Leone’s maximum-security prison for women*. Al Jazeera.

^{xvi} Lourtau, D. and Pia Hickey, S., 2018. *Judged for more than her crime: A global study of women facing the death penalty*. Penal Reform International. London. pp. 2. Available from: <https://www.penalreform.org/resource/women-who-kill-in-response-to-domestic-violence/> [Accessed 5 June 2019].

^{xvii} *Ibn-Tamas v United States*, 407 A.2d 626 [D.C. 1979]; *Lavern Longworth v The Queen* [2012]; *Lovelace v The Queen* [2017]

^{xviii} Mahtani, S., 2016. *Aminata's story: justice for women who kill*. Penal Reform International: AdvocAid. pp. 2. Available from: <https://www.penalreform.org/blog/justice-for-women-who-kill/> [Accessed 5 June 2019].

^{xix} Lourtau, D. and Pia Hickey, S., 2018. *Judged for more than her crime: A global study of women facing the death penalty*. Penal Reform International. London. pp. 2. Available from: <https://www.penalreform.org/resource/women-who-kill-in-response-to-domestic-violence/> [Accessed 5 June 2019].

^{xx} Mahtani, S., 2016. *Aminata's story: justice for women who kill*. Penal Reform International: AdvocAid. pp. 2. Available from: <https://www.penalreform.org/blog/justice-for-women-who-kill/> [Accessed 5 June 2019].

^{xxi} Cornell Law School, September 2018. *Judged for more than her crime: A global overview of women facing the death penalty*. pp. 11. Available from:

<https://www.deathpenaltyworldwide.org/pdf/judge-for-more-than-her-crime.pdf> [Accessed 5 June 2019].

^{xxii} Linklaters LLP Staff., 2016. *Women who kill in response to domestic violence: How do criminal justice systems respond?* Penal Reform International. London.

^{xxiii} MacDougall, C., 2012, October 15, 2012. *Edward Nahim: Sierra Leone's only psychiatrist*. Newsweek. Available from: <https://www.newsweek.com/edward-nahim-sierra-leones-only-psychiatrist-65489> [Accessed 5 June 2019]. Further confirmed in email correspondence with staff at AdvocAid. April 1, 2019.

^{xxiv} This estimate is based on a conversation with staff at The Death Penalty Project and The Fair Justice Initiative. April 1, 2019.

^{xxv} 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.