



World Day Against the Death Penalty

Women Sentenced
to Death:
An Invisible Reality

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19th World Day Against the Death Penalty

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Egyptian Initiative for Personal Rights

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About the World Day Against the Death Penalty:

The Egyptian Initiative for Personal Rights joins the World Day Against the Death Penalty, which aims this year to focus on women who have been sentenced to death, those who have been executed and women at risk of being sentenced to death. EIPR's position has been and remains to call for the suspension of the death penalty until a broad societal dialogue is opened about its deterrent effect. Our call for this suspension is supported by our focus on patterns of violations existing in cases where death penalties have been recently issued, especially cases of a political nature, in order to draw attention to another problem with the use of this sentence, regardless of our position against it in principle, namely that it takes many lives in cases marred by violations and judicial errors.

This year and on World Day Against the Death Penalty, we discuss for the first time issues of women who have been subjected to numerous forms of persecution and abuse in their daily lives, before their problems turn into legal ones, from gender discrimination on a daily basis to domestic violence, be it physical or sexual, to which a large proportion of the women sentenced to death had been subjected to before the felony occurs. The felony we are concerned with here is murder, a felony for which many of those tried, have been subjected to violence themselves. In this context, the victim sometimes turns into a perpetrator – a reality that becomes invisible in the stories of the many women accused of murder and those sentenced to death. In this paper, we seek to tell the stories of some of these women, hoping that this will provide a new perspective, through which we can shed light on the harsh and unfair reality of death penalties in cases of premeditated murder. We also draw attention to the fact that the Penal Code lacks a material- and- moral (intangible)- elements analysis of the crime when it comes to these felonies. All this leads to ending the lives of some, who were victims for long periods before committing the act that led them to the death row.

Women and the Death Penalty

1- Perpetrators or victims?

“I imagined that they were “criminals”, that they would be the most difficult thing to deal with and the thing one should fear the most: “criminals,” “murderers,” “drug dealers”. I have never thought or read about the impact of an entity and institution like the prison on the perceptions of people who live outside of it. A childish naive image that those inside are dangerous, and that that’s why they isolate them and build a fence around them. The women inside made the detention bearable with their stories and cohabitation. I think most of them, had we lived in a better society that doesn’t force one to make miserable choices for lack of options, would not kill or harm anyone. In most of the stories I heard, had the circumstances been somewhat humane, the «crime» would not have taken place.»¹

About the murderer of her husband in Toukh:

Reham Saeed and “the victim of Toukh” is a story that became famous in July 2021 about a young woman who stabbed her husband with a knife in his chest after a physical quarrel had occurred between them. The husband died as a result, and the Public Prosecution convicted Reham of “premeditated murder.” In the same statement published by the Public Prosecutor’s Office, some details of the incident were mentioned, including that the wife was not trying to take the husband’s life and had no intention of killing him - and that she wanted to scare him with a knife after he had assaulted her crushing her neck (The forensic report proved this after reviewing traces of choking on her neck). However, it so happened that the stab hit the husband in his chest and killed him.

Reham’s story is neither the first nor the last, but rather one of dozens of stories of women who were convicted of the premeditated murder of their husbands and often end up on death row. In the following, we present some of the problems that women face in premeditated murder cases on the basis of information on the investigations and trials collected from media sources, which often do not cover the full story. We found several similarities between their and Reham’s stories.

In many countries women are subjected to gender-based discrimination at various stages of the litigation process. The first form of this discrimination lies in the dif-

1- Yara Sallam’s blogpost “Snippets about Prison” on her relationship with the female detainees in Al Qanater Prison <https://talkingpersonal.blogspot.com/2019/08/blog-post.html>

faculty of proving having been subjected to domestic violence due to the absence of laws that deal with this type of violence and violations that occur within the home. Next layer of this discrimination is the prosecution and judicial authority's narrow interpretation of the concept of lawful self-defense.² According to this narrow interpretation, the entire self-defense argument rests on two components. First, there needs to be severe and apparent injuries on the victim. Secondly, the act of self-defense must have been committed in the moment, in which the woman is subjected to harm that leads to her physical or sexual injury or her death. This definition³ does not cover the dynamics of domestic and sexual violence occurring from acquaintances of women within their families, whether from the husbands themselves or other male relatives.

This is a recurrent and widespread pattern in many societies as it is in Egypt. In the following paragraphs, we review excerpts from some of the cases involving women accused of killing their husbands, most if not all of whom are on death row.

From news articles related to cases of women accused of killing their husbands

“Because of the deceased’s bad treatment of her and because of his cheapness and lack of spending on his wife, she was always out of the house, leaving the marital home and going to her family’s home in Al Nahda, Cairo. The last time she left, she stayed at her mother’s for three days. Then, her mother brought her back to her husband, the victim, once again.”

2- Article 246 of the Penal Code: The right of lawful self- defense allows a person, in other than the exceptional cases defined hereinafter, to use the power necessary to obviate any act considered as a crime on one’s life as prescribed in this law.

Article 249: The right of lawful self-defense shall not allow premeditated killing unless it is meant to ward off one of the following matters:

First: An act feared to cause death or deep wounds, if such fear is based on plausible reasons.

Second: coerced lying with a woman or indecent assault on a person by force.

Third: Kidnapping a human being

3- “Judged for more than her crime” – a global overview of women facing the death penalty

The Cornell Center on the Death Penalty Worldwide, September 2018, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

«The wife stated that more than once she requested separation, but he refused»
- «She is no older than 25 years old, and the husband is approaching his 55th year.»

The wife killed him after she caught him recording a video of them during their sexual intercourse, in order to blackmail her if she asks for divorce or separation from him. She headed to the kitchen, grabbed a knife and stabbed him in the heart, which led to his immediate death.

«He deserves to die ... he forces my son to work to spend money on him... But it wasn't possible to kill him alone... I agreed with the rest of the defendants to carry out the crime... and we got rid of him... He deserves to die a hundred times.»

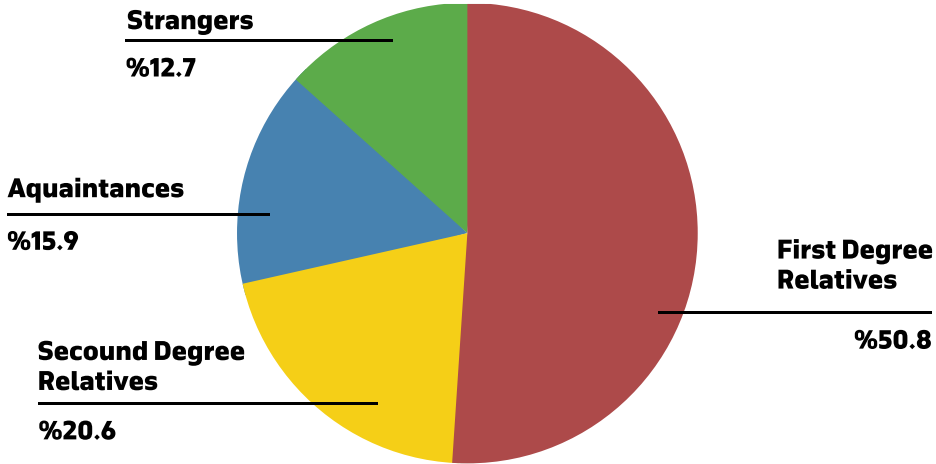
Number of death sentences issued or carried out against women during the last three years

Despite the fact that most perpetrators of murders are usually men, there is a noticeable increase in the murders committed by women. This is in the context of an unprecedented rise in the use of the maximum judicial penalty, as Egypt saw an enormous rise in the issuance and execution of death sentences over the past five years. On this basis, we monitored and documented the death sentences issued against and executed on women accused of premeditated murder, according to the cases the research team was able to monitor. This by no means reflects a comprehensive record of all cases, in which women are accused of premeditated murder (note: The charge in all the cases that we monitored where women were convicted and sentenced to death or executed, was premeditated murder).

1- Table: Death Penalty Verdicts issued and executed over the last three years:

Year	Death sentences issued against women from criminal courts and the Court of Cassation (first instance and final)	Executions carried out
2018	16	1
2019	20	0
2020	15	6
2021 (until August)	12	4
Total	63	11

2- A comparison of the number of crimes committed in relation to the degree of kinship between the victim and the perpetrator 2018 – 2021

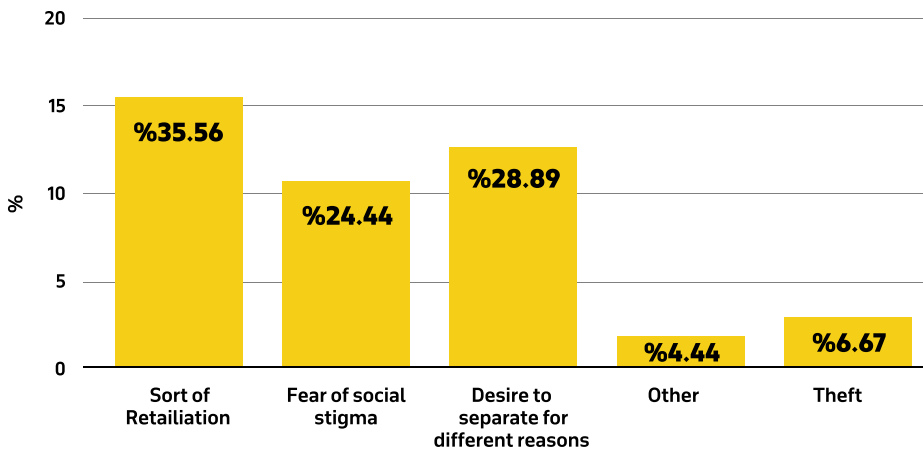


Of all murders committed by women recently⁴, we find that the largest portion are murders, in which the victim is a first-degree relative of the defendant (this includes the husband, who represents the largest portion of first-degree relatives, followed

4- From the methodology used in “Women who are accused of premeditated murder: A survey conducted on Women’s Prison in Egypt” (2003) by Ahmed El-Magdoub

by one of the parents, children, and finally the mother in law). This is followed by second-degree relatives, and the nature of the kinship varies here (example: cousin or ex-husband). Acquaintances and strangers occupy the last ranks, and in a large percentage, the crimes committed against them are associated with the motive of theft. Given that the murder of relatives occupies the largest percentage of the criminal cases where women are accused (over half of the total crimes), which indicates the existence of a problem related to family and domestic relations, we attempt in the following to find a pattern that can be deduced from the motives behind women committing premeditated murders in Egypt.

3- Chart showing the different motives for murder mentioned in the investigation files of cases of women killing their relatives: sort of retaliation, fear of social stigma and the desire to separate for various reasons:



The first motive for the majority of women in the reviewed case files was a sort of retaliation in order to avoid the persistence of bad or humiliating treatment or recurrent violence at home or in the context of marital disputes. The desire to separate (for various reasons) also emerges among the main motives of women to murdering the husband in particular, as many of the convicted women had repeatedly sought divorce from their husbands and their requests were rejected or met with obstinacy, whether by the husband or the parents (and sometimes from both). Murder out of fear of social stigma is another recurrent motive. In some cases, the defendant is in an extramarital affair and the felony is committed out of fear that

the victim might find out about that relationship and the stigma associated with this knowledge that the woman alone would be held responsible for. It is often the case that women pay toll prices for their extramarital affairs while the men involved remain unaffected. In the same relationship, they are not stigmatized and do not lose their relationships with their families.

An attempt to address the issue in a more comprehensive and just manner: Legislative and societal reforms to reduce both crimes and severe penalties

The crimes for which women are sentenced to death reflect a pattern of gender-based discrimination and violence that women are subjected to on a daily basis.⁵ As this simple review of the death sentences issued against women in the past three years reveals, the largest portion of murders committed by women are committed against relatives, most of them of the first degree. Investigation documents in these cases point to a causal connection between committing the crime and the attempt to eliminate gender-based violence or abuse. Such violence or abuse ranges from domestic violence, to direct sexual violence to the coercion of women to stay in potentially harmful relationships primarily due to legal obstacles, but also due to social and economic conditions that impede women from obtaining the same right as men to separate or divorce.

Unfortunately, laws and procedures relating to personal status, as one example, have contributed to consolidating these obstacles and this multidimensional imbalance in the exercise of rights between men and women. On the World Day Against the Death Penalty, which this year sheds light on women sentenced to death, we aim to initiate a discussion that other societies preceded us in having and that we desperately need to have in Egypt in order to reduce these crimes that are mainly related to domestic and family violence and in order to reduce the resulting executions. We put forward some proposals that include legislative and other measures that can contribute to legally addressing the increase in crimes committed by - and against - women, in order to reduce severe penalties in general and against women in particular.

5- "Prison conditions for women facing the death penalty", Cornell Law School in collaboration with the World Coalition Against the Death Penalty, available at: https://cdn.penalreform.org/wp-content/uploads/2018/10/PRI-Women-on-death-row-briefing-paper_SINGLES-003.pdf

The National Strategy for Human Rights launched by President Abdel Fattah El-Sisi on 11 September 2021 lists “reluctance to benefit from services and programs supporting women exposed to violence and abuse, due to lack of awareness of these services” as one of the challenges in combatting violence against women.⁶

The National Strategy consists of a chapter that suggests several economic, social, and political implementations that aim to empower and enable women. However, as the strategy mentions the lack of awareness among women about the services available to support them in the event they are exposed to violence or abuse, among one of the challenges, even though that is true we still need to stress out the fact that the main obstacles that women face on daily basis are that Egypt’s arsenal of laws lacks any piece of legislation that provides judicial institutions with legal tools that enable them to deal with gender-based violence – domestic violence or physical violence against women from relatives in general.

Furthermore, the strategy does not disclose the scale of these services in Egypt (while it is much smaller than needed) or the possibility of accessing them. If the laws exist and the state invests with more transparency and openness in care services that enable women to avoid gender-based discrimination and violence from the outset and enable them to protect themselves if they are exposed to any of these violations, we will not reach the point where these violations transform into criminal justice problems accompanied by severe sentences and executions and loss of more lives. This is why we stress that priority be given to the enactment of well-defined laws aimed at applying a social system that protects and enables women economically and socially, provides them with health and social care services and supports women who are survivors or at risk of gender-based violence and abuse. This includes providing care and shelter homes for physically and psychologically abused women including monthly stipends for the women and their children in order to break the cycle of financial dependence on the person perpetrating the violence or abuse against them, especially if the husband or father is the only financial provider. It is also crucial to improve education and working conditions for women and to work more seriously towards integrating a greater percentage of women into the Egyptian labor market.

Furthermore, if we assume the targeted outcomes of the national human rights

6- The National Strategy for Human Rights, Third Focus area: Human Rights of Women.

strategy as a point of departure, especially those that stipulate amending laws that enhance and facilitate women's full access to their rights and the rights of their children, then fulfilling legislative equality in personal status, including in separation and divorce procedures, and reversing historical biases in favor of the husband embedded in these laws, should be of highest priority. It is also necessary to allocate a budget to be spent on social welfare and the services provided by government institutions concerned with women's issues in general and gender-based violence and abuse in particular. Furthermore, civil society organizations should participate in monitoring the implementation of human rights strategies and the National Strategy for the Empowerment of Egyptian Women, based on their role in defending human rights and their ability to access and provide assistance to the society's most marginalized groups, including women who are survivors of gender-based violence. The provision in the national human rights strategy stipulating training "for members of the Public Prosecutor's Office, judges, forensic doctors, police officers, and Ministry of Health to deal with victims of violence" should include, if it is not already included in a way or another, a training customized to dealing with victims of violence who are women defendants in criminal cases - or defendants that are also potential victims in one way or another.⁷

The meaning of "premeditated" in murder crimes:

One of the reasons we continue to demand a moratorium on the death penalty is the need to pass a bundle of legislative amendments in the penal and criminal procedures codes aimed at reducing the rate of loss of life that has accelerated enormously over the past five years. Such amendments would rather undo some recent others that we believe severely undermine the defendant's right to a fair trial, which explicitly contradicts the Egyptian Constitution. In our view, the Penal Code also contains some outdated articles that are no longer consistent with contemporary concepts of criminal justice and need to be immediately amended, for they result in death sentences that can and should be prevented.

For example, based on our review of death sentence cases where defendants are women, we find a recurring pattern in most of them where there is a sharp contrast between the accused's account of the incident and the prosecution's assessment

7- The National Strategy for Human Rights 2021-2022

of its circumstances. Most of the time, the prosecution ignores the circumstances around the incident including domestic and physical violence, and discrimination that women are subjected to from various angles.

The prosecution undertakes the investigation of the case, the accused narrates the circumstances that led her to commit the crime and from the narrow-minded perspective of Egyptian criminal law, everything that came in her narration of inter-related circumstances turns into evidence of indictment against her.⁸ For some incomprehensible reason, the conviction always includes premeditation (and ambush) despite the fact that the narrative of the accused usually denies this, even if she admits to committing the crime.

The term premeditation⁹ comprises a temporal factor (a sufficient period of time) and a mental factor (the existence of an intent to commit the act). In Egyptian law, when a person is charged with a criminal offense with «premeditation», the conviction is based on the knowledge of the investigative authorities and their evidence submitted to the judge that the temporal and mental factors satisfy the threshold of premeditation (and ambush). In reality, however, the investigative authorities' use of the term premeditation is tainted by many shortcomings and taking the easy way out. The Court of Cassation in one of its rulings stated that “it is established that the intent to kill is a hidden matter that cannot be determined by the apparent sense. It is rather realized by observing the circumstances surrounding the case and the exposed external signs that the perpetrator conveys and that reveal what he harbors in himself.”¹⁰ In other words, the intention to kill cannot be determined except by looking at the material and mental circumstances surrounding the incident – what led the offender

8- From interview with lawyer Nasser Amin

9- Article 231: Premeditation is planning of all act beforehand that shows willful intent to commit a misdemeanor or

felony act, of which the purpose is to harm a certain person or any undefined person he finds or comes across whether that purpose is conditional upon the incidence of some event or dependent upon a certain condition.

Article 232: Ambush is lying in wait for a person in a place or many places for a long or short period of time, to

be able to kill that person, or harm him/her by beating and so forth.

10- From the merits of a Court of Cassation case, available in Arabic at:

https://www.cc.gov.eg/judgment_single?id=111366304&ja=47151

to reach the moment of committing the crime. Despite this, we find that the public prosecution does not apply this principle in dealing with women who are victims of violence in general and who are also defendants in murder cases in particular.

For example, in the aforementioned case of “the murderer of her husband in Toukh”, Reham was convicted of premeditated murder despite the prosecution’s knowledge that she had been subjected to domestic violence and attempted murder by her husband (the victim), who had tried to strangle her, which was all documented in the preliminary inquiries memorandum.

Concerning the judicial aspect, a judge must look into the circumstances surrounding the incident and provide an opportunity for the defendant to have an integrated defense so that the perpetrator’s lawyer can show what violence she was subjected to, should this be the case, before a judge can impose a sentence convicting her of committing the crime with premeditation. In fact, the sentence should be commuted if the crime occurred in a context in which the defendant was subjected to violence, as it happens in other countries that aim to combat severe sentences and support women who are survivors of gender-based violence.

An example of this is a famous case in Sudan of «Nora Hussein», who was forced to marry at the age of 16 a man twice her age. Nora was accused of murdering her husband after being subjected to marital rape and was sentenced to death.¹¹ After local and regional advocacy efforts and the efforts of international organizations, including the United Nations and Amnesty International¹² in solidarity with Nora and against the ratified death penalty, the Shari’a Court in Sudan commuted Nora’s death sentence to five years imprisonment. This was following an Amnesty International initiative that had been signed by more than 400,000 people from around the world, calling for a pardon for Nora, given the mental and material circumstances surrounding the incident.

11- “Judged for more than her crime” – a global overview of women facing the death penalty

The Cornell Center on the Death Penalty Worldwide, September 2018, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

12- Amnesty International’s press release on women on death row: <https://www.amnesty.org/en/latest/news/2021/10/world-day-against-the-death-penalty-women-on-death-row-face-despicable-discrimination/>

As for the history of the Egyptian judiciary, a famous case from the year 1932, the “Al-Badari Officer” case, comes to mind. In this case two young men deliberately and premeditatedly murdered a police officer, after he had tortured them at an earlier point in time. The criminal court of first instance found them guilty of premeditated murder and sentenced the two men to death. The Court of Cassation then turned the scales in its verdict, despite it being, in terms of jurisdiction and mandate, unable to commute the sentence (At that time and until the 2017 amendments, the Court of Cassation could only send a case back for a retrial when it considered a case for the first time), the court still stated that:

“Since the appellants were frightened of the recurrence of such violations against them, and whereas there is no doubt that he, who has been harmed and violated unjustly and oppressively and who is expecting this terrible harm to be inflicted again against him; if his soul leads him to kill his tormentor, it will lead him to this crime tormented by what had been, agitated and overwhelmed by what will be. This disturbed and agitated soul is a raging one and its agitation never gives room for perception and calmness so that the mind - calm, balanced, and deliberative – can decide about the intended criminal purposes that it imagines will resolve its agony. Accordingly, there is no possibility for “premeditation” to apply, as the state requires that the offender have the opportunity to pause and think comfortably about what he is about to undertake.”¹³

In the merits¹⁴ of the judgment, judge Bahaa Al-Mari states that despite the existence of the temporal and mental (intention to kill or criminal intent) elements, which made the defendants liable to conviction for premeditated murder, the factor of calmness and deliberation was absent during the defendants’ commission of the felony, specifically due to the violations they had been subjected to before committing the crime.

Therefore, the articles concerned with premeditated murder must be redefined in the Penal Code¹⁵, to include mitigating provisions if the judge is certain that violations were committed against the offender by the victim. In addition, the death

13- From the Merits of the Court of Cassation’s verdict in the case known in the media as “Al Badari Officer – 1932” – Judge Bahaa Al Mari announced the verdict.

14- Magda Fouad, “Premeditation in murders committed by women. National Criminal Journal - National Center for Social and Criminological Research

15- Article 230 of the Penal Code: “Capital punishment shall be the penalty inflicted on whoever premeditatedly murders another person.”

penalty should be abolished from the Penal Code or at least suspended until the penal and criminal procedures codes are reviewed, for penalties to be consistent with contemporary criminal justice concepts.

All we demand, therefore, is the proper application of the meaning of premeditation (and ambush) as stipulated in Egyptian criminal law and as stated in the principles confirmed by the Court of Cassation nearly a hundred years ago. This step alone would reduce the number of women sentenced to death, which in itself should be a target of the Egyptian state and its justice system, regardless of its official position on the death penalty.