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Uganda's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women: The Death Penalty

Submitted by The Advocates for Human Rights

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Foundation for Human Rights Initiative

and

The World Coalition Against the Death Penalty

for the 81st Session of the Committee on the Elimination of All Forms of Discrimination Against Women

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

The World Coalition Against the Death Penalty (World Coalition), an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The **Foundation for Human Rights Initiative** (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organisation, registered in Uganda under the Non-Governmental Organizations Act, 2016. FHRI Vision is a society based on a human rights

and civic culture as a foundation for peace, stability, democracy, social justice and sustainable development. FHRI's Mission is to promote respect and observance of human rights practices and civic values, enhance best practices through training, education, research, advocacy, ICTs, and strategic partnership. The organisation has Observer Status with the African Commission on Human and Peoples' Rights, is a member of the World Coalition Against the Death Penalty (Paris) and is affiliated to the International Federation of Human Rights Defenders, (FIDH) in Paris, France. It is a membership organisation with a total of 1,515 members. FHRI commands a 29-year experience and expertise in human rights activism in Uganda. FHRI has been at the forefront in monitoring and documenting human rights violations, publication of periodic human rights reports, legal aid service provision to victims of human rights abuse; reporting before regional human rights treaty bodies, the judiciary, parliament, police and prisons; actively campaigns for the abolition of the death penalty including carrying out programmes that promote citizen participation and state accountability. Currently, it is spearheading five campaigns namely; *My Rights, My Power, Access to Justice, Rights and Rule of Law, Freedom from Pre-trial detention and the Campaign against the death penalty in Uganda*. FHRI is located at the Human Rights House, Plot 1853, John Kiyungi Road, Nsambya, Kampala Uganda.

EXECUTIVE SUMMARY

1. This report addresses Uganda's compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women with respect to the death penalty. The report examines and discusses Ugandan death penalty laws and cases where women are sentenced to death row in Uganda, primarily for murder.
2. This report recommends that Uganda adopt a number of key recommendations to better align its death penalty practices with Uganda's obligations to women under the Convention. These steps, among other things, include: (1) abolishing the death penalty and in the interim, limiting the death penalty to only the most serious crimes of intentional killing of another human; (2) ensuring proper gender-sensitive training in the judicial system and protecting women in conflict with the law when gender-based violence is involved; (3) developing and implementing programs to prevent gender-based violence and discrimination; and (4) ensuring fair access to counsel to women sentenced to death or at risk of being sentenced to death.

Uganda fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women with its retention of the death penalty

3. Uganda is a retentionist state,¹ meaning that it retains the death penalty for ordinary crimes. As of the end of 2020, there were 133+ people on death row in Uganda, which is a decrease from the 250+ people on death row in 2017.² The last recorded civilian execution occurred in 1999 and the last recorded military execution occurred in 2005.³ Courts have significantly reduced the number of death sentences issued since the landmark 2009 *Kigula* case,⁴ with no recorded death sentences in 2017, 5 recorded death sentences in 2018, 2 in 2019, and none in 2020.⁵
4. After a court sentences a person to death, the case record is submitted to the Advisory Committee on the Prerogative on Mercy, a committee that is made up of the Attorney General and six Ugandan citizens appointed by the President. The Advisory Committee reviews the defendant's case and makes a recommendation to the President on clemency, with the President making the final decision.
5. In December 2020, Uganda voted against the General Assembly's Resolution on a Moratorium on the Use of the Death Penalty.⁶

¹ Amnesty International, *Death Sentences and Executions 2020*, Apr. 21, 2021, p. 58. Available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

² Amnesty International, *Death Sentences and Executions 2020*, Apr. 21, 2021, p. 58. Available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

³ Cornell Center on the Death Penalty Worldwide, *Uganda Country Profile*. Available online at <https://deathpenaltyworldwide.org/database/#/results/country?id=82>.

⁴ The Ugandan Supreme Court in *Kigula* held that the death penalty is no longer mandatory for capital offenses. The Ugandan Supreme Court held that various provisions of the laws of Uganda prescribing a mandatory death sentence were inconsistent with the Constitution insofar as they were contrary to the principles of equality before the law and of fair trial. *Attorney General v. Susan Kigula & 417 Others* (Constitutional Appeal No. 03 OF 2006) [2009] UGSC 6 (21 January 2009).

⁵ Amnesty International, *Death Sentences and Executions 2020*, Apr. 21, 2021, p. 58. Available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>

⁶ Amnesty International, *Death Sentences and Executions 2020*, Apr. 21, 2021. Available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

I. The Ugandan Government's retention of the death penalty invites discriminatory sentences against women facing gender-based violence (List of Issues Paragraphs 4 and 10).

6. The Committee requested information on the measures taken by the State Party to provide relief and redress by providing access to justice in instances of sexual and gender-based violence.⁷ In addition, the Committee requested information on the measures taken or envisaged by the State Party to assess the impact of the national policy and action on the elimination of gender-based violence.⁸ The Committee also requested information on how the State Party ensures that all allegations of domestic and sexual violence against women and girls, including sexual assault and rape, are duly investigated.⁹
7. The State Party's response overlooks the need for comprehensive training programs for prosecutors and judges when women are in conflict with the law. Specialized training is particularly important when women are defending themselves against gender-based violence (*i.e.*, defending against an abuser and acting in self-defense). Such training programs are especially important when women are subsequently charged with death-eligible offenses.
8. Women represent a small percentage of people on death row globally.¹⁰ As such, there is little recorded information on the number of women on death row. There is limited information on the women who have been sentenced to death or executed in Uganda. In 2018, there were 11 women reported to be on death row in Uganda (*i.e.*, 4% of people on death row).¹¹
9. There is limited information available on the context of the crimes committed by women who have been sentenced to death in Uganda. However, there is at least one reported case in which the woman was sentenced to death for killing her abuser.¹² This case suggests that when women are sentenced to death for killing another human being, legal proceedings ignore gender-based violence and the imbalance in power dynamics between an accused woman and the abusive spouse or family member.
10. According to a comprehensive study conducted by the Cornell Center on the Death Penalty Worldwide, data indicate that most women on death row have been sentenced to death for the crime of murder.¹³ And according to Penal Reform International, which studied women who

⁷ Convention on the Elimination of All Forms of Discrimination Against Women. *List of Issues and questions in relation to the sixth periodic report of Uganda*, due in 2022, (10 Mar. 2021), U.N. Doc. CEDAW/C/UGA/Q/8-9, ¶ 4.

⁸ Convention on the Elimination of All Forms of Discrimination Against Women. *List of Issues and questions in relation to the sixth periodic report of Uganda*, due in 2022, (10 Mar. 2021), U.N. Doc. CEDAW/C/UGA/Q/8-9, ¶ 10.

⁹ Convention on the Elimination of All Forms of Discrimination Against Women. *List of Issues and questions in relation to the sixth periodic report of Uganda*, due in 2022, (10 Mar. 2021), U.N. Doc. CEDAW/C/UGA/Q/8-9, ¶ 10.

¹⁰ World Coalition Against the Death Penalty & The Advocates for Human Rights, *Women Sentenced to Death: An Invisible Reality*, Oct. 10, 2021, p. 2.

¹¹ Sabrina Mahtani, *The Invisibles: Women on Death Row in Africa*, Oct. 10, 2018, <https://www.africaportal.org/features/invisibles-women-death-row-africa/>.

¹² Tanya Murshed, affiliated with Evolve, Interview with the Cornell Center on the Death Penalty Worldwide, Mar. 18, 2015.

¹³ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 11. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

kill in the context of domestic violence in Uganda, approximately 86% of all women in prison (not just those sentenced to death) in Uganda are either charged with or convicted of murder, manslaughter, or assault.¹⁴ Penal Reform International's study also showed that a quarter of all homicides committed by women in prison in Uganda involve the death of an intimate partner.¹⁵

11. The women imprisoned in Uganda for committing offences against life (*i.e.*, murder, assault, or manslaughter) have typically experienced prolonged domestic violence at the hands of a partner, spouse, or another family member. As such, domestic violence is an important context for homicides committed by women in Uganda.¹⁶
12. Under Ugandan law, the elements of self-defense have been articulated under *Uganda v. Kamyuka Ivan* to include: (1) an attack on the accused person or close relative; (2) reasonable belief that he was in imminent danger of death or serious bodily harm; (3) belief that it was necessary to use force to repel the attack; and (4) reasonable belief that the force used was necessary to prevent or resist the attack.¹⁷ Though self-defense has been used widely in homicide cases against an intimate partner, it has not been accessible to women who kill following a *history* of abuse. This gap is because these women often cannot make a showing of an actual threat at the time the responsive force was used. Consequently, the response may be viewed as unreasonable. Moreover, the requirement of apprehension of death or grievous bodily harm is problematic in the context of domestic violence because not all forms of abuse are physical (*i.e.*, emotional abuse, economic/financial abuse).¹⁸
13. Despite limited information on women being sentenced to death in Uganda, the information above suggests that women in Uganda face the death penalty in part because judicial proceedings discriminate against women due to a lack of gender-sensitive training and do not take into account the circumstances of the alleged crime. Alarming, courts rarely consider domestic violence as a mitigating factor during sentencing.¹⁹ Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may impact a woman's involvement in a crime.

¹⁴ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

¹⁵ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

¹⁶ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

¹⁷ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

¹⁸ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 16. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

¹⁹ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 11-12. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

II. The Ugandan Government's retention of the death penalty invites discriminatory sentencing against women in poor and marginalized communities. (List of Issues Paragraph 21).

14. The Committee requested information on the measures taken by the State Party to ensure that all services are available to rural and other disadvantaged groups of women, including indigenous women, to ensure the participation of women in decision-making processes.²⁰
15. In response to the List of Issues, the State Party outlines that Article 32 of the 1995 Constitution provides for affirmative action in favor of historically disadvantaged groups.²¹ The State Party lacks any showing of a mechanism supporting disadvantaged groups, such as allowing for the submission of gender-specific factors for the circumstances of a woman's violent crime (*i.e.*, protecting children, protecting oneself from an abuser, etc.). The State Party's response overlooks the need for comprehensive gender-sensitivity training for prosecutors and judges when women, particularly women in marginalized communities, are in conflict with the law. In instances where a woman is experiencing domestic violence or any other form of gender-based violence, these gender-specific considerations are crucial.
16. Interviews with lawyers and non-governmental organizations in Uganda indicate that the vast majority of women on death row are from poor and marginalized communities.²² In Uganda, a study of incarcerated women reveals that they are largely uneducated, poor, ignorant of the law, and survivors of domestic violence.²³ Among the imprisoned women²⁴ in Uganda surveyed by Penal Reform International, 61% had never been to school.²⁵ In 2017, the UN Office of the High Commissioner of Human Rights called the death penalty a "class-based form of discrimination in most countries, thus making it the equivalent of an arbitrary killing."²⁶
17. Women living in poverty are disproportionately arrested, incarcerated, and sentenced to death worldwide.²⁷ In general, women from poor or marginalized communities are more heavily

²⁰ Convention on the Elimination of All Forms of Discrimination Against Women. *List of Issues and questions in relation to the sixth periodic report of Uganda*, due in 2022, (10 Mar. 2021), U.N. Doc. CEDAW/C/UGA/Q/8-9, ¶ 21.

²¹ Convention on the Elimination of All Forms of Discrimination Against Women. *Replies of Uganda to the list of issues and questions in relation to its combined eighth and ninth periodic reports*, due in 2022, (29 June 2020), CEDAW/C/UGA/8-9, ¶ 40, §137.

²² The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

²³ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 21. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

²⁴ Those surveyed were women imprisoned in Uganda for committing offences against life but not necessarily sentenced to death.

²⁵ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 13. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

²⁶ U.N. Office of the High Commissioner for Human Rights, Death penalty disproportionately affects the poor, U.N. rights experts warn. Available online at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>, Oct. 10, 2017.

²⁷ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

policed, lack access to quality legal representation, and cannot afford to appeal their cases in court.²⁸ Marginalized and disadvantaged women in Uganda often do not have access to quality legal aid. Consequently, these women choose to plead guilty in their cases, often because of the lack of resources for counsel and because they are more likely to be illiterate and unaware of their legal rights.²⁹ ³⁰ Lack of quality legal access has a profound impact on marginalized and disadvantaged women in Uganda, which can lead to a woman being sentenced to death arbitrarily.

18. Although parliament removed reference to the death penalty in the 2019 Anti-Homosexuality Act before passing it,³¹ discourse around anti-LGBT legislation has a negative effect on the lives of LBT women in Uganda. Ugandan courts have never officially sentenced anyone to death penalty for same-sex sexual conduct, but repeated efforts to introduce the death penalty for same-sex conduct continue to threaten the human rights of LBT women. Ugandan politicians such as Minister of State for Ethics and Integrity Simon Lokodo publicly promote the idea that LGBT people deserve the death penalty.³² Such statements exacerbate social stigma and can increase the risk of hate crimes based on sexual orientation and gender identity and expression, such as destruction of property, blackmail, mob violence, “corrective rape,” and murder.³³ LBT women, including transgender women, are often the victims of these crimes.³⁴ Moreover, many victims do not report these crimes because they are reluctant to go to the police, who are often themselves perpetrators of hate crimes based on sexual orientation and gender identity and expression.³⁵

²⁸ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

²⁹ Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 21. Available online at https://cdn.penalreform.org/wp-content/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf

³⁰ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

³¹ Sexual Minorities Uganda, Sexual Offences Bill Withdrawn to include new Amendments, Feb. 2019. Available online at <https://sexualminoritiesuganda.com/publications/blog/sexual-offences-bill-withdrawn-to-include-new-amendments/>

³² Reuters, Uganda denies plans to impose death penalty for gay sex amid global concern, Oct. 2019. Available online at <https://www.reuters.com/article/us-uganda-lgbt-rights/uganda-denies-plans-to-impose-death-penalty-for-gay-sex-amid-global-concern-idUSKBN1WT23I>

³³ The Guardian, Uganda anti-gay law led to tenfold rise in attacks on LGBTI people, report says, May 2014. Available online at <https://www.theguardian.com/world/2014/may/12/uganda-anti-gay-law-rise-attacks>; The Guardian, Gay African refugees face abduction, violence and rape in Uganda and Kenya, May 2012. Available online at <https://www.theguardian.com/world/2012/may/18/gay-african-refugees-violence-kenya-uganda>.

³⁴ The Guardian, Gay African refugees face abduction, violence and rape in Uganda and Kenya, May 2012. Available online at <https://www.theguardian.com/world/2012/may/18/gay-african-refugees-violence-kenya-uganda>; Sexual Minorities Uganda, Let’s Remember, and Continue to Fight: Transgender Day Of Remembrance 2019, Nov. 2019. Available online at <https://sexualminoritiesuganda.com/publications/blog/lets-remember-and-continue-to-fighttransgender-day-of-remembrance-2019/>.

³⁵ Sexual Minorities Uganda, Let’s Remember, and Continue to Fight: Transgender Day Of Remembrance 2019, Nov. 2019. Available online at <https://sexualminoritiesuganda.com/publications/blog/lets-remember-and-continue-to-fighttransgender-day-of-remembrance-2019/>

III. Suggested recommendations³⁶ for the Government of Uganda

19. The authors offer the following suggested recommendations for Ugandan authorities:

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and consistent with international human rights standards.
- In the interim, eliminate the death penalty as a possible sentence for offenses that do not involve an intentional killing committed at the hands of the person being sentenced.
- Acknowledge the compounding forms of violence suffered by girls and women—including gender-based violence and early and forced marriage—and review laws, criminal procedures, and judicial practices, and implement policies and legislative reforms to protect against such human rights violations.
- Revise the law on murder/manslaughter to permit courts to take domestic violence into account for self-defense where homicide is committed in the context of a violent relationship or a history of gender-based violence.
- Ensure that survivors of sexual violence are not prosecuted for illegal sexual conduct or similar offenses.
- Ensure proper gender-sensitive training of all persons involved in the investigation, representation, and prosecution of crimes involving women.
- Ensure that no woman or girl is sentenced to death for any crime committed when under the age of 18 years old.
- Guarantee that each woman receives an individualized judicial process and is not charged through association with a male spouse, partner, or family member.
- Increase the number of women involved in high positions of power within the Ugandan legal systems (*i.e.*, judges, prosecutors, and court administrators).
- Develop and implement programs to prevent gender-based violence and discrimination, ensuring that access to justice, protection measures, and legal, social, and medical services are designed and implemented in a manner that ensures inclusion and accessibility for all, including women who are particularly vulnerable.
- Provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crimes of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.
- In collaboration with civil society organizations, conduct an awareness-raising campaign within the judiciary and with all members of the Advisory Committee on

³⁶ Some of these recommendations are borrowed or adapted from *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 35. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>

the Prerogative on Mercy about alternatives to the death penalty and human rights concerns involved with capital punishment, focusing in particular on the gender dimension of women in conflict with the law, and follow up with related training for all current and incoming members of the judiciary and the Advisory Committee.

- Ensure that the women at risk of being sentenced to death have access to free and effective legal counsel specialized in capital representation, and that are trained to recognize and bring forward claims of gender-specific defenses.
- Guarantee that no further legislation will be introduced that allows for the death penalty based on a person belonging to any group or based on any characteristic, for example on the basis of sexual orientation and/or gender identity or expression.
- Ensure that LBT women within Uganda are not subject to state violence or hate crimes and receive gender-sensitive support services if they are victims of such offenses.